RECORD, CASE No. 13,600.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. 392. 65

GEORGE E. DOWLING, PLAINTIFF IN ERROR,

vs.

THE NATIONAL BANK OF AMERICA, AT CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED AUGUST 10, 1889.

vigorous dissent from the conclusion reached by Chief Justice *Turney* and Judges *Lurton* and *Caldwell*.

Their dissent was based upon two grounds: 1st, that under a proper construction, *section 3142 did not apply to the Supreme Court of the State*. 2nd, if, under a proper construction, that section did attempt to bind the Supreme Court, then it was *unconstitutional* under the Federal and State Constitutions, *because not the law of the land; not due process of law*.

149215772

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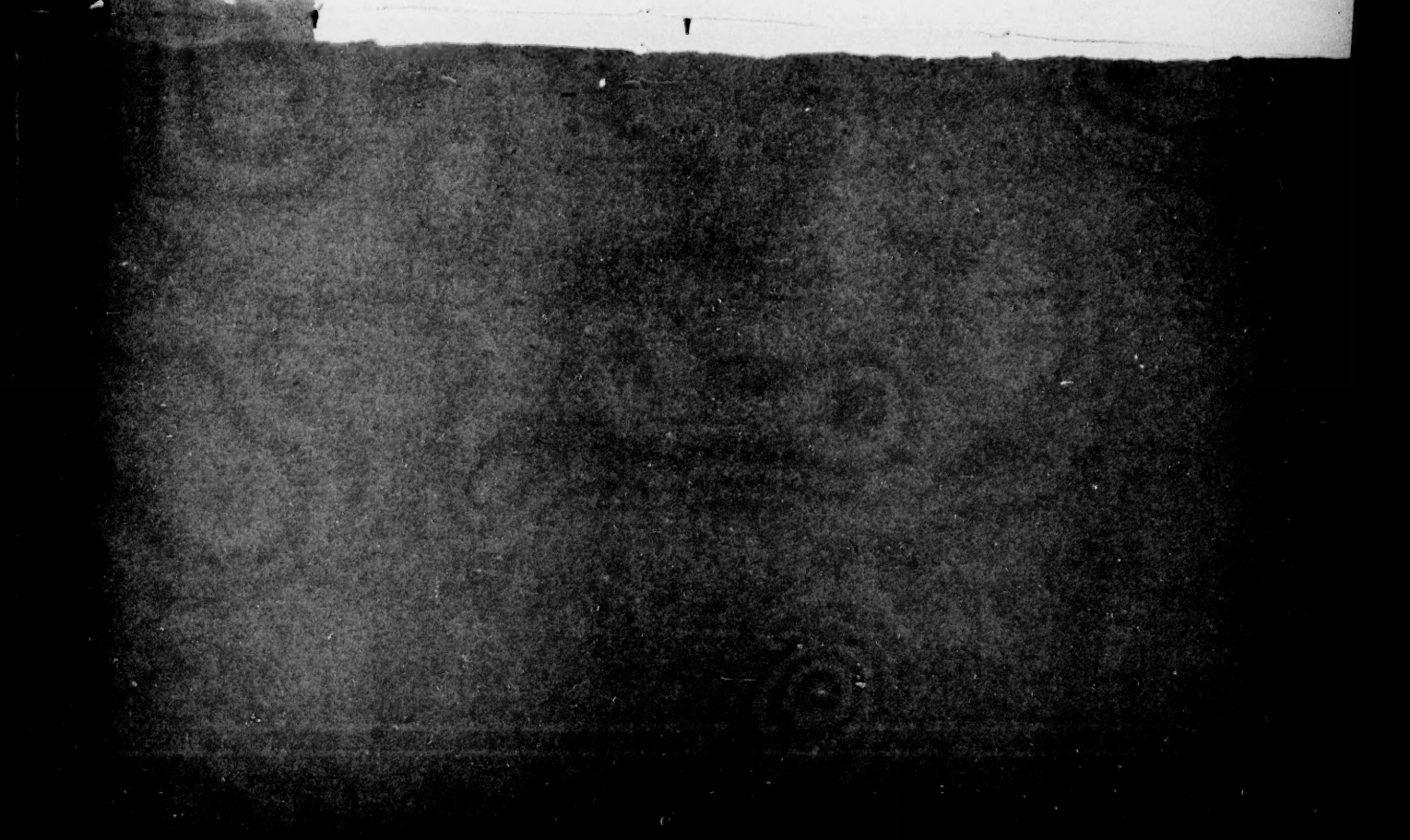

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1 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

SIR: Let a writ of summons issue in favor of the above-named plaintiff against the above-named defendants, returnable the first day of March next, in an action on the case upon promises, to the plaintiff's damage fifteen thousand dollars.

Yours, &c.,

BLAIR, KINGSLEY & KLEINHANS,
Plaintiff's Attorneys.

To Charles L. Fitch, clerk.

[Endorsed:] No. 2213. U. S. cir. ct., W. dist. Mich., S. div'n. Nat. Bank of America, at Chicago, *vs.* Frank H. White *et al.* Præcipe for writ — summons. Filed February 2nd, 1887. Charles L. Fitch, clerk. Blair, Kingsley & Kleinhans, pl'ff's att'ys.

2 UNITED STATES OF AMERICA:

Circuit Court of the United States of America for the Sixth Circuit and Western District of Michigan, Southern Division.

The President of the United States of America to the marshal of the western district of Michigan, Greeting:

You are hereby commanded that you summon Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants, who are all citizens of the State of Michigan, if they shall be found in your district, to be and appear in the circuit court of the United States of America for the sixth circuit and western district of Michigan, southern division, to be held at the city of Grand Rapids, in the said district, before the judges thereof, on the first day of March, A. D. 1887, then and there to answer unto The National Bank of America, at Chicago, which is a citizen of the State of Illinois, plaintiff, in a plea of trespass on the case upon promises, to the damage of the plaintiff of fifteen thousand dollars.

And have you then and there this writ.

Seal of the Circuit Court of the United States for the Western District of Michigan, Southern Division.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, this 2d day of February, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

CHARLES L. FITCH, *Clerk.*

BLAIR, KINGSLEY & KLEINHANS,
Plaintiff's Attorneys.

We hereby become security for all costs that may be recovered against the plaintiff in the within suit.

Feb. 2d, 1887.

BLAIR, KINGSLEY & KLEINHANS.

WESTERN DISTRICT OF MICHIGAN, *ss:*

3 I hereby certify and return that on the 2d day of Feb'y, A. D. 1887, I served the within writ on the defendant Thomas W. Ferry, and on the 3d day of Feb'y, A. D. 1887, I served the within writ on Edward P. Ferry, within named, at Grand Haven, in said district, by delivering to each of said defendants a copy of the within writ, with the seal of the court thereon endorsed as hereon impressed, at the same time showing to each of said defendants so served this original writ and calling attention to the seal of the court.

D. R. WATERS,
U. S. Marshal.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 25th day of February, A. D. 1887, I served the within writ on the defendant George E. Dowling, at Montague, in said district, and on the defendant Frank H. White, at the township of Ferry, Oceana Co., in said district, by delivering to each of said defendants a copy of the within writ, with the seal of the court thereon endorsed as hereon impressed, at the same time showing to each of said defendants so served this original writ and calling attention to the seal of the court.

JAMES B. LEE.
Dep'ty U. S. Marshal.

[Endorsed:] No. 2213. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Summons. Filed Feb'y 28, A. D. 1887. Charles L. Fitch, clerk. Blair, Kingsley & Kleinhans, plaintiff's attorneys.

4 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division.

WESTERN DISTRICT OF MICHIGAN, *Southern Division,* } *ss:*

National Bank of America, at Chicago, which is a corporation created and existing under and by virtue of an act of Congress entitled the national bank act, and which is a resident of and has its principal office and place of business in the city of Chicago, Illinois, and which is a citizen of the State of Illinois, by Blair, Kingsley & Kleinhans, its attorneys, complains of Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, who have here-

tofore been duly summoned to answer the said plaintiff in a plea of trespass on the case upon promises, to the plaintiff's damage of fifteen thousand dollars, and who are citizens of the State of Michigan.

Whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, at the time of making the promises and undertakings hereinafter mentioned and set forth, were and thence hitherto have been copartners in business under and by the firm name and style of F. H. White & Co.;

And whereas the said defendants Edward P. Ferry and Thomas W. Ferry, at the times last mentioned, were and thence hitherto have been copartners in business under and by the firm name and style of Ferry & Brother;

And that whereas the said defendants, as copartners, respectively, as aforesaid, on, to wit, the 2d day of February, A. D. 1887, at, to wit, Grand Rapids, in said district, were indebted to the plaintiff, a corporation as aforesaid, in the sum of fifteen thousand dollars for the price and value of goods then and there sold and delivered
5 by *by* the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendants at their request;

And in a like sum for money then and there lent by the plaintiff to the defendants at their request;

And in a like sum for money then and there paid by the plaintiff for the use of the defendants at their request;

And in a like sum for money then and there received by the defendants for the use of the plaintiff;

And in a like sum for money then and there found to be due from the defendants to the plaintiff on an account stated between them;

And thereupon the said defendants, as copartners, respectively, as aforesaid, afterwards and on the day and year and at the place aforesaid, in consideration of the premises respectively, then and there promised the said plaintiff to pay to it the said several last-mentioned moneys respectively on request, yet said defendants have disregarded their said promises and have not paid any of the said moneys or any part thereof, although often requested so to do, to the plaintiff's damage of fifteen thousand dollars; and therefore it brings suit, etc.

BLAIR, KINGSLEY & KLEINHANS,
Plaintiff's Attorneys.

To the above-named defendants:

Take notice that on the trial of the above cause the plaintiff, under the money counts, will give in evidence two certain promissory notes, copies of which are given below, and which constitutes the sole bill of particulars of plaintiff's demand in the above-entitled cause.

BLAIR, KINGSLEY & KLEINHANS,
Plaintiff's Attorneys.

6 Copy.

"$5,500.00. MONTAGUE, MICH., *Oct. 19th*, 1882.

"Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

"F. H. WHITE & CO."

Endorsed on the back:

"$3,725 paid April 14th, 1886, by I. G. Lombard, trustee."

"Interest paid April 14th, 1886 (an agreed amount), by I. G. Lombard, trustee, on within to May 1st, 1886."

"We hereby guarantee the payment of within note at maturity and waive demand, notice, and protest."

"FERRY & BRO. FERRY & BRO."

"$5,500.00. MONTAGUE, MICH., *Nov.* 16, 1882.

"Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

"F. H. WHITE & CO."

Endorsed on the back:

"Interest (an amount as agreed) paid April 14th, 1886, on within to May 1st, 1886."

"We hereby guarantee the payment of within note at maturity, waiving demand, notice, and protest."

"FERRY & BRO. FERRY & BRO."

[Endorsed:] No. 2213. United States circuit court, western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* *Narr.* Blair, Kingsley & Kleinhans, attorneys for pl't'ff. Filed Mar. 3rd, 1887. Charles L. Fitch, clerk.

7 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA OF CHICAGO, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, & THOMAS W. FERRY, Defendants.

To the clerk of said court:

Please enter the appearance of Edward P. Ferry and Thomas W. Ferry, two of the defendants, by me as their attorney.

Dated Grand Rapids, March 16th, 1887.

Yours, &c., T. J. O'BRIEN,
Attorney for Defendants Edward P. Ferry and Thomas W. Ferry.

[Endorsed:] No. 2213. The circuit court of the U. S. for the western district of Michigan, southern division. The Nat. Bank of America of Chicago *vs.* Frank H. White *et al.* Præcipe for appearance of def'ts Ferry. Filed March 17th, 1887. Charles L. Fitch, clerk. T. J. O'Brien, att'y for def'ts Ferry.

8 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } Entered March 17th, 1887.

In this cause, on motion of T. J. O'Brien, attorney for defendants Edward P. Ferry and Thomas W. Ferry, it is ordered that the appearance of said defendants, Edward P. Ferry and Thomas W. Ferry, be, and the same hereby is, entered.

T. J. O'BRIEN,
Att'y for said Defendants, Edward P. Ferry and Thomas W. Ferry.

9 UNITED STATES OF AMERICA:

The Circuit Court *for* the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

The defendant George E. Dowling, by M. Brown, his attorney, comes and demands a trial of the matters set forth in the plaintiff's declaration.

Dated March 22nd, 1887.

M. BROWN,
Attorney for Defendant George E. Dowling.

[Endorsed:] No. 2213. United States circuit court, western district of Michigan, southern division. The National Bank of America, at Chicago, *vs.* George E. Dowling, impleaded. Plea, non-assumpsit. Filed March 23rd, 1887. Charles L. Fitch, clerk. M. Brown, att'y for def't George E. Dowling.

10 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

WESTERN DISTRICT OF MICHIGAN, *ss:*

George E. Dowling, of Montague, Michigan, being duly sworn, deposes and says that the copartnership of F. H. White & Co., while it existed, was composed of Frank H. White, Edward P. Ferry, and this deponent as copartners. Deponent says further that he never executed the promissory notes, copies of which were served with the plaintiff's declaration in this cause; that the signatures thereto are not in his handwriting, and that said promissory notes were not executed by any person having authority to bind this deponent or to bind the said defendants, Edward P. Ferry, Frank H. White, and this deponent, jointly.

And further deponent says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 21st day of March, A. D. 1887.

CHAS. H. COOK,
Notary Public in and for Muskegon Co., Mich.

[Endorsed:] No. 2213. United States cir. court, western dist. of Mich., so. div. National Bank of America, at Chicago, *vs.* George E. Dowling, impleaded. Affidavit denying execution of notes. Filed March 23rd, 1887. Charles L. Fitch, clerk. M. Brown, att'y for def't Geo. E. Dowling.

11 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA OF CHICAGO, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

The said defendants, Thomas W. Ferry and Edward P. Ferry, by T. J. O'Brien, their attorney, come and demand a trial of the matters set forth in the plaintiff's declaration in this cause.

Dated March 22nd, 1887.

T. J. O'BRIEN,
Attorney for Defendants Edward P. Ferry & Thomas W. Ferry.

[Endorsed:] No. 2213. Circuit court of the U. S., western dist. Mich., S. division. National Bank of America *vs.* Frank H. White *et al.* Plea gen'l issue by def'ts Ferry. Filed Mar. 23rd, 1887. Charles L. Fitch, clerk. T. J. O'Brien, att'y for def'ts Ferry.

12 The Circuit Court of the United States for the Western District of Michigan, Southern Division, *ss:*

FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants, *ads.* THE NATIONAL BANK OF AMERICA, Plaintiff.

The defendant Frank H. White, by Smith, Nims, Hoyt & Erwin, his attorneys, comes and demands a trial of the matters set forth in the plaintiff's declaration.

SMITH, NIMS, HOYT & ERWIN,
Attorneys for Defendant White.

Please to take notice that the said defendant will on the trial of this cause insist upon and give in evidence, under the general issue above pleaded, that before and at the time of the commencement of this suit the said plaintiff was and still is indebted to the said defendant in the sum of fifteen thousand dollars for the price and value of goods before then sold and delivered by the defendant to the plaintiff at its request, and in a like sum for the price and value of work then done and materials for the same provided by the defendant for the plaintiff at its request; and in a like sum for the money lent by the defendant to the plaintiff at its request; and in a like sum for money then paid by the defendant for plaintiff at its request; and in a like sum for money then received by the plaintiff for the use of the defendant; and in a like sum for money then found to be due from the plaintiff to the defendant on an
13 account stated between them; and in a like sum for the use of money then due from the plaintiff to the defendant and by the defendant forborne to the plaintiff at its request; which said several sums of money, or so much thereof as will be sufficient for that purpose, the said defendant will set off and allow to the plaintiff against any demand or demands of said plaintiff to be proved by it on said trial and have the balance certified in his favor.

Dated the 22nd day of August, 1887.

Yours, etc.,

SMITH, NIMS, HOYT & ERWIN,
Attorneys for Defendant White.

To Blair, Kingsley & Kleinhans, attorneys for plaintiff.

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. Frank H. White *et al.*, defendants, *ads.* The National Bank of America, plaintiff. Plea non-assumpsit and notice of set-off. Filed Aug. 23rd, 1887. Charles L. Fitch, clerk. Smith, Nims, Hoyt & Erwin, att'ys for def't White.

14 October Term, A. D. 1887.

TUESDAY, *November* 1, 1887.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

Counsel for the respective parties appearing in open court and consenting thereto—
It is ordered that this cause be, and the same is hereby, continued for the term without costs to or against either party.

15 5732.

$5,500.00. MONTAGUE, MICH., *Nov.* 16, 1882.

Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

F. H. WHITE & CO.

412. No. 4720. Due —. To pay 2,717.

[Written across the face in red ink:] Judgment entered on this note June 6, 1888. C. L. Fitch, clerk U. S. c't c't, W. dist. Mich.

[Endorsed:] Interest (an amount as agreed) paid April 14th, 1886, on within to May 1st, 1886. We hereby guarantee the payment of within note at maturity, waiving demand, notice, & protest. Ferry & Bro. Ferry & Bro. F. H. White, Geo. E. Dowling, E. P. Ferry, partners. "Exhibit A." P. A. Hoyne, U. S. com'r.

$1,775. 3,725. Endorse. Jan. 20.

$5,500.00. MONTAGUE, MICH., *Oct. 19th*, 1882.

Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

F. H. WHITE & CO.

No. 4719. Due —. To pay 2,353.

[Written across the face in red ink:] Judgment entered on this note June 6, 1888. G. L. Fitch, clerk U. S. c't c't, W. D. Mich.

[Endorsed:] $3,725 # paid April 14th, 1886, by I. G. Lombard, trustee. Interest paid April 14th, 1886 (an agreed amount), by I. G. Lombard, trustee, on within to May 1st, 1886. We hereby guarantee the payment of within note at maturity and waive demand, notice, and protest. Ferry & Bro. Ferry & Bro. Exhibit B. F. H. White, Geo. E. Dowling, E. P. Ferry, partners. "Exhibit B." P. A. Hoyne, U. S. com'r.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

GENTLEMEN: You will please to take notice that the plaintiff proposes to take the deposition of Isaac G. Lombard, who resides in the city of Chicago, State of Illinois, and at a distance of more than one hundred miles from the place of trial of this cause; which deposition will be taken under and pursuant to section 863 of the Revised Statutes of the United States on Wednesday, the 25th day of May, A. D. 1888, before Philip A. Hoyne, United States commissioner, at his office, numbers 52 and 53 Government building, in the city of Chicago aforesaid, and the examination of said witnesses will commence at 10 o'clock in the forenoon of that day and continue from day to day thereafter until completed.

Dated April 27, 1888.

Yours, etc.,

BLAIR, KINGSLEY & KLEINHANS,
Attorneys for Plaintiff.

To Messrs. Smith, Nims, Hoyt & Erwin, attorneys for defendant White; M. Brown, Esq., attorney for defendant Dowling; T. J. O'Brien Esq., attorney for defendants Ferry.

We hereby admit due personal service of a notice of which the foregoing is a copy.

Dated April 28, 1888.

SMITH, NIMS, HOYT, & ERWIN,
Att'ys for Def't White.
M. BROWN, *Att'y for Def't Dowling.*
T. J. O'BRIEN, *Att'y for Def'ts Ferry.*

[Endorsed:] National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Admission of service of notice of taking depositions. Blair, Kingsley & Kleinhans, att'ys for pl'ff.

16 In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

ISAAC G. LOMBARD, a witness called on behalf of plaintiff, being first duly sworn, was examined in chief by Mr. KLEIHANS, and testified as follows:

Q. Your name is Isaac G. Lombard?
A. Yes, sir.
Q. You reside in Chicago?
A. Yes, sir.
Q. You are twenty-one years of age and upwards?
A. Yes, sir.
Q. Are you acquainted with the National Bank of America, at Chicago?
A. I am president of the bank.
Q. Were you also acquainted with the Fifth National Bank of Chicago?
A. I was cashier of that bank.
Q. The charter of the Fifth National bank expired and it went into liquidation, did it?

Counsel for defendant Dowling objects on the ground that it is incompetent.

A. It went into liquidation just before its charter expired—some two or three months.
Q. When was that?
A. The 31st day of December, 1882.
Q. Was that the date of the expiration or liquidation?
A. That was the date it went into liquidation. I do not
17 remember the date of the expiration of the charter, but it was some time in February, 1882.
Q. When did the National Bank of America commence business?
A. The 31st of December, 1882.
Q. What were the relations between the two banks?
A. The banks were composed of nearly the same stockholders and nearly the same directors. The National Bank of America bought all the paper—not all, but such paper as was satisfactory—of the Fifth National bank.
Q. Substantially succeeded to all its business?
A. Yes, sir; practically.
Q. Are you acquainted with the firm of Ferry & Bro.?
A. I am.
Q. Have you ever had any business dealings with them either in behalf of the Fifth National bank or the National Bank of America?
A. With both.

Q. Do you remember about when those relations with Freey & Bro. commenced?

A. I can tell nearly. They commenced as far back as December, 1873. That is what I find in the record, but I think we had some small relations with them before.

Q. Did they have an account in the Fifth National Bank of America?

A. They did.

Q. Did they have a line of credit with that bank?

A. Yes, sir; we used to discount for them.

Q. Do you know of the firm of F. H. White & Co., of Montague, Mich.?

A. I do.

Q. Did you ever discount any of their paper?

A. I did.

Q. Which bank did the discounting?

A. The Fifth National bank.

Q. I wish you would now state, Mr. Lombard, what paper
18 of the firm of F. H. White & Co. the Fifth National bank discounted at any time, giving the date of the paper and the date that you discounted it, and state also the amounts and maturity of the papers and all the particulars of the papers.

Counsel for defendant Dowling objects on the ground that it is incompetent and immaterial.

A. Do you want me to give the history all through the transactions that we had in discounting paper for F. H. White & Co.?

Mr. KLEIHANS: Yes.

A. On December 10th, 1873, we discounted for Ferry & Bro. a note of F. H. White & Co., amount, $10,000, dated December 10, 1873, and due March 13, 1874; October 16th, 1878, we discounted paper made by the same parties, endorsed by the same parties, amount, $5,000, dated October 16th, 1878, and due January 16th, 1879; March 6th, 1880, we discounted $5,000 for the same parties, dated March 6th, due June 7th, 1880; June 10th, 1880, $5,000, dated June 9th and due September 10th, 1880; July 2nd, 1880, $5,000, dated July 1st and due October 2nd, —; October 9th, 1880, $5,847.31, dated October 8th, 1880, and due January 9th, 1881; January 18th, 1881, $5,621.48, dated January 17th, 1881, and due April 20th, 1881; February 19th, —, $5,486.32, dated February 18th, due May 22nd, 1881; April 20th, 1881, $5,594.38, dated April 19th, 1881, and due July 21st; July 21st, 1881, $5,500, dated July 20th, 1881, and due October 21st, 1881; August 20th, 1881, $5,500, dated August 19th and due November 20th, —; October 21st, 1881, $5,500, dated October 20th, —, and due January 21st, 1882; November 19th, 1881, $5,500, dated November 18th, due February 19th, 1882; November 19th, 1881, $5,500, dated November 18th, due February 19th, 1882; January 21st, 1882, $5,500, dated December 19th, 1881, and
19 due April 22nd, 1882; February 18th, 1882, $5,500, dated February 16th, 1882, and due May 20th, 1882; April 22nd 1882, $5,500, dated April 21st, 1882, and due July 23rd, 1882; May

20th, 1882, $5,500, dated May 18th and due August 19th, 1882; July 22nd, 1882, $5,500, dated July 21st, 1882, and due October 22nd, 1882; August 19th, 1882, $5,500, dated August 17th, 1882, and due November 18th, 1882; October 21st, 1882, $5,500, dated October 19th, 1882, and due January 20th, 1883; November 18th, 1882, $5,500, dated November 16th, 1882, and due February 17th, 1883. Those are the transactions.

Q. Of all of this paper that you have mentioned, who was the maker of it?

A. It was all made by F. H. White & Co. and endorsed by Ferry & Bro.

Q. I now show you a note, dated October 19th, 1882, for $5,500, made by F. H. White & Co., endorsed by Ferry & Bro. Will you state whether that is one of the notes in suit or not?

A. Yes; that is one of the notes in suit.

Q. That is one of the notes mentioned in your previous statement, is it?

A. It is.

Q. When did the Fifth National bank become *of* the owner of that note?

A. October 21st, 1882.

Q. What was the consideration which you paid for it?

A. It was a renewal of one that was previously made, due October 22nd.

Q. Mentioned in your previous statement?

A. Mentioned in my previous statement.

Q. Was that last-mentioned note an original note or renewal of a previous one?

A. A renewal of a previous one.

Q. I wish you would take the note in suit of October 19th, 1882, and trace it back through the previous renewals to its origin.

A. The original note discounted was made July 20th, 1881, for $5,500 and due October 21st, 1881. There were several renewals.

Q. Who had the proceeds of that discount?

A. Ferry & Bro.

Q. When did they get them?

A. They got them July 21st, 1881—$5,401.62.

Q. That was the face of the note, less the usual discount?

A. Yes, sir.

Q. As I understand you to say, there were successive renewals of that note of July 20th, 1881, until the final outcome was this note of October 19th, 1882, the note in suit?

A. It was.

Q. Give the dates of the various renewals, the time when the Fifth National took them, and the date of their maturity, tracing it from the original note down to the note of October 19th, 1882, the note in suit.

A. The original note was dated July 20th, 1881. It was discounted July 21st, 1881; it was due October 21st, 1881. Then it was renewed with the note dated October 20th, 1881, which was due

January 21st, 1882, and it was renewed January 21st, 1882, by a note dated December 19th, 1881, due April 22nd, 1882, which was renewed April 22nd by the note dated April 21st, 1882, and due July 23rd, 1882, which was renewed July 22nd, 1882, by a note dated July 21st, 1882, and due October 22nd, 1882; which last note was renewed October 21st, 1882, by this note in suit, dated October 19th, 1882, and due January 20th, 1883.

Q. All of these renewals were for the same sum of $5,500?

A. Yes, sir.

Q. I now show you a note for $5,500, dated November 16th, 1882, signed by F. H. White & Co. at the order of Ferry & Bro. State whether that is the other note in suit or not.

A. Yes, sir; that is the other note in suit.

Q. When did the Fifth National bank become the owner of that note?

A. On the 18th of November, 1882.

Q. What consideration did it pay for it?

A. It was given to take up another note of the same amount which was due the 18th of November.

Q. Is that the last renewal of the note which runs in the
21 bank like the other one?

A. It is.

Q. State when the original note of that—that is, the renewal—was taken by the bank. Give its date, amount, and time of maturity.

A. The original note was taken August 20th, 1881, was dated August 19th, 1881, and matured November 20th, 1881.

Q. The Fifth National bank became the owner of that original note August 20th, 1881?

A. Yes, sir.

Q. What did it pay for it?

A. It credited to the account of Ferry & Bro. $5,401.62.

Q. They were given that credit August 20th, 1881?

Counsel for defendant Dowling objects on the ground that it is incompetent.

A. August 20th, 1881.

Q. The amount for which they were given credit for was the face of the note less the usual bank discount?

Same objection as last above noted.

A. Yes, sir.

Q. Now, you may commence with that original note and trace down its earliest renewals until it results in this note of November 16th, 1882.

Same objection as last above noted.

A. The original note was due November 20th, 1881; it was renewed November 19th by a new note dated November 18th, 1881, and due February 19th, 1882; which note was renewed February 18th, 1882, by a note dated February 16th, 1882, and due May 20th,

1882; which was renewed May 20th, 1882, by a note dated May 18th, 1882, and due August 19th, 1882; which was renewed August 19th, 1882, by a note dated August 17th, 1882, and due November 18th, 1882; which was renewed November 18th, 1882, by this note dated November 16th, 1882, and due February 17th, 1883.

22 Q. All these renewals were for the sum of $5,500?

A. Yes, sir.

Q. And all the renewals in the case of both notes was paper made by whom?

Counsel for defendant Dowling objects on the ground that it is immaterial and incompetent.

A. Paper made by F. H. White & Co. and endorsed by Ferry & Bro. Now, I say all these were renewed at that time. It appears by the books that some of them were paid by check and the amount of the discount credited, and some by renewals.

Counsel for defendant Dowling moves to strike the last answer out as incompetent.

Q. For whom were those notes discounted—the notes in suit and their originals?

A. For Ferry & Bro.

Q. And were credited with the amounts?

A. They had credit for the proceeds.

Q. What became of the money which was placed to their credit?

Counsel for defendant Dowling objects to the question on the ground that it is immaterial and incompetent.

A. They checked it out.

Q. Checked them out before these notes became due?

A. Yes, sir; before they matured. They were not kept separate. The proceeds went into their general account, and they were checked out with other moneys.

Q. When did the National Bank of America become the owner of these notes?

A. December 31st, 1882.

Q. What did it pay the Fifth National bank for them?

A. Paid them the face of the note, less 6 per cent. interest to maturity.

Q. Did you at the time you took any of this paper that you
23 have mentioned for F. H. White & Co. have any notice or information or knowledge of any kind whatsoever that any of the makers had or claimed to have any defense to it?

A. I did not.

Q. Did you at the time of taking any of this paper, and particularly the notes in suit and their originals, have any notice, knowledge, or information of any kind whatsoever that it was not issued and made by the firm of F. H. White & Co. in the usual course of their business and as part of their business?

Counsel for defendant Dowling objects to the question on the ground that it is incompetent, immaterial, and irrelevant.

A. I did not.

Q. Did you ever have any conversation with any members of the firm of Ferry & Bro. as to what the paper was issued for made by F. H. White & Co.?

Counsel for defendant Dowling objects to the question on the ground that it is incompetent and immaterial and any statements made by any members of that firm could not bind the defendant Dowling.

A. I did with T. W. Ferry.

Q. What did he tell you about the paper?

Counsel for defendant Dowling objects to the question as incompetent.

A. He told me it was money loaned F. H. White & Co. for them to purchase logs.

Q. Did he say anything about the continuous paper or anything of that sort?

Same objection as last above noted.

A. Yes, sir. I asked him why it was continuous—why it was not closed up—and he said they were continually advancing them money.

24 Q. Was that before you advanced them the money or not?

Same objection as last above noted.

A. It was.

Counsel for plaintiff offers the notes in evidence, subject to proof hereafter to be made of the signature, being two notes dated October 19th, 1882, and November 16th, 1882, marked Exhibits A and B.

Q. Do you know how you got these particular notes, Exhibits A and B?

A. No, sir; I do not.

Q. You don't remember just how you got them?

A. I don't know whether we got them by mail or from T. W. Ferry. Some were sent one way and some the other.

Cross-examination by Mr. BROWN:

Q. Which one of the members of Ferry & Bro. did you do this business with?

A. I think T. W. Ferry. I have had some business with E. P., but I think not about this, but I am not positive as to that. I know the most of it was with T. W. Ferry.

Q. The paper of which this was a renewal, can you tell?

A. My impression is that nearly all of it, if not all, was with Ferry or by correspondence. The correspondence was from Grand Haven and I don't know who attended to that.

Q. When you testify as to these notes and the notes of which they were renewals, Mr. Lombard, do you speak from your own information or from what the books of the bank show?

A. It is from my own memory aided by the books of the bank. Of course, I would not remember dates way back so far. I had the transaction. I discounted them when they were taken, or the president, Mr. Ludington, and myself, but I knew of it, and was one of the parties to the discount, but the dates are taken entirely from the books of the bank.

25 Q. Were you ever at Montague, Michigan?

A. I think I never was.

Q. Or at Grand Haven, Michigan?

A. Yes, sir.

Q. How frequently have you been there since the time you commenced doing business with Ferry Bro.?

A. I don't think I was ever there until about the commencement of these suits—that is, the maturity of these notes—about that time.

Q. You never was there until about that time?

A. Yes, sir; I have been there. I can't seem to think why or when, but I have been there before that.

Q. Do you know how long before?

A. No, sir.

Q. Was you doing business with Ferry & Bro. when you were there?

A. No, sir; I can't seem to think why I was there.

Q. You don't recollect why you went to Grand Haven at any particular time?

A. No, sir; I do not—not until about the maturity of these notes, or, I would say, the trouble began.

Q. You were in Grand Haven, you recollect, about the time these notes matured?

A. I think just about the maturity of the notes.

Q. At that time did you go there on account of your having these notes?

A. Yes, sir.

Q. You must have gone, then, from there to Montague at that time?

A. No, sir.

Q. Do you swear positively, Mr. Lombard, that you never had any business relations of discounting this paper and the paper of which these two notes were given in renewal with Mr. E. P. Ferry?

A. No, sir; I could not swear positively to that. My impression is I did not, because T. W. transacted all the business for nearly all of that —. I have had some business with E. P. Ferry, and I might possibly have had with the renewal of some of these notes.

26 Q. Are you aware of the fact that T. W. Ferry was in Washington for several years before these notes were given?

A. Yes, sir.

Q. He was United States Senator?

A. Yes, sir.

Q. Who made these payments on the notes that are endorsed?

A. I think they were made by the sale of collaterals that were given me by Ferry Bros.

Q. Which one of the Ferrys gave you the collaterals?

A. Practically both of them.

Q. Were both present when they were turned over?

A. Well, I think not; no. I think that T. W. had power of attorney from E. P. I think the business transaction was with T. W.

Q. Did you have any negotiations at all with E. P. Ferry about it at the time the negotiations were made about that paper?

A. Yes, sir.

Q. Where?

A. I first met him at Lansing, Michigan.

Q. When was that?

A. I cannot fix the date when it was, but I think it was about the middle of January.

Q. What year?

A. 1883.

Q. You had a conversation with him about this paper?

A. About this paper and other papers.

Q. Will you please state the conversation you had with him.

A. I told him first I wanted it paid. He said he could not do it, but would try and secure it in a measure.

Q. What kind of collaterals did he give you; what were they?

A. Well, it was a bill of sale of two lumber camps.

Q. Where were they located?

A. One was located at Black Lake, or Black Creek, and one at White Lake. I do not recall the names of the places distinctly.

27 Q. They were two lumber camps?

A. I say lumber camps. That is what they termed them. It was the logs they had cut or owned and were in process of being brought down in the spring. I continued the business, cut the logs, and sold the lumber.

Q. You were acting as trustee at that time for somebody?

A. I was acting as trustee for Ferry Bros. and the National Bank of America.

Q. Were you appointed by an instrument in writing?

A. Yes, sir.

Q. Where is it?

A. I either have it in the bank or else Mr. Kleihans has it.

Mr. BROWN: I shall want that produced upon the trial of the case.

Q. These notes that you have mentioned, prior to the notes of which the ones in suit are renewals, who did you get them from?

A. I got them from Ferry Bros.

Q. Those would be notes prior to 1881?

A. Yes, sir; the whole of the notes I got from Ferry Bros.

Q. All of the notes that you have mentioned?

A. All the notes I have mention- I got from Ferry & Bro.

Q. The notes that you got from them prior to 1881, that were made by F. H. White & Co., do you recollect who handed those

notes over to you—which one of the members of the firm of Ferry & Bro.?

A. I don't recollect; but most of my business was with the Senator. He was in Chicago often, and would always come to the bank. Still I did have some transactions with E. P., and I cannot remember that.

Q. Now, all these matters that you testified about, the discounting of notes, etc., appear on the books of the bank, don't they?

A. They do.

Mr. BROWN: I now move to strike out all of this testimony in relation to the discounting of the notes, or so much thereof as
28 appears on the bank books.

Redirect examination by Mr. KLEIHANS:

Q. Mr. Lombard, you participated personally in the discounting of all of this paper that you have testified about, did you?

A. Yes, sir; I did.

Q. You stated that you have a recollection on the subject, but you are aided as to dates by reference to the bank books?

A. Yes, sir.

Q. Let me ask whether you can state independent of the books yourself, as a matter of memory, whether you ever took any paper you have testified about after maturity.

A. No, sir; I never did.

Q. Independent of the books, can you state generally whether the paper was taken shortly after its date or not?

A. No; I cannot.

Q. You could not tell how long before maturity?

A. No, sir; I have to depend entirely on the books for my dates.

Q. Do you know you never took any after maturity?

A. Certainly I know that. I know I never did in my life take a note after maturity.

Q. Can you state from memory the facts that you paid for each piece of paper the amount of it less the discount?

Counsel for defendant Dowling objects on the ground that the question is leading.

A. No; I can't state from memory how I paid for it.

Q. As to the amount you paid?

A. Not as to the amount I paid. I can't state from memory the exact amount.

Q. Would you know whether you paid the face of the paper less the discount?

Counsel for defendant Dowling objects on the ground that
29 the question is leading and suggestive.

A. Yes, sir; I know I paid the face of the paper, less the discount.

Q. You stated in your direct examination that Senator Ferry informed you that the paper was made by F. H. White & Co. because

Ferry & Bro. were making advances to that firm to enable them to get out logs.

Objected to by defendant Dowling as incompetent.

A. They did.
Q. Did you ever have any intimation to the contrary respecting this paper?

Same objection as last noted.

A. Not before its maturity.
Q. Until after its maturity?
A. I don't know that I can say that either—not before maturity—not before that collateral was given us.
Q. That was after you had taken the notes in suit?
A. Yes, sir; about the middle of January I heard all kinds of rumors.
Q. January, 1883?
A. Yes, sir; that was the first intimation I had of a rumor of any kind.
Q. I think you testified in your direct examination that the amount placed to the credit of Ferry & Bro. on the discount of paper, of which the notes in suit are renewals, was checked out by them before the maturity of the original notes?

Objected to by defendant Dowling as incompetent.

A. No; I think I said it was placed to their general credit and checked out; yes, checked out before the maturity of these notes.
Q. How about the maturity of the original notes?

Same objection as last above noted.

A. I could not tell. It was a general account. I didn't separate the money at all. They had money to their credit all the while.
Q. What do you mean by general account?
A. They had a general account in our bank, of which they remitted us different remittances deposited for proceeds of lumber sold, and all that sort of thing, as well as discount.

Counsel for defendant Dowling moves to strike the last answer out as incompetent.

Q. And their checking against that constantly?

Objected to by defendant Dowling as leading and incompetent.

A. They were checking against that account.
Q. Do you know whether their account at your bank was closed out before these notes matured or not—these notes in suit?

Objected to as incompetent.

A. It was.
Q. How was it closed out?

A. There was a small balance to their credit which I credited on a note of theirs.

Q. How much was that?

A. Five or six hundred dollars.

Q. Was that before the maturity of the notes in suit or not?

A. It was.

Q. Was it before or after you heard that there was any irregularity about the issue of this paper?

A. It was before.

Recross-examination by Mr. BROWN:

Q. Was it after or before you heard the Ferrys had failed?

A. It was after the rumors of their failure.

Q. Which note was it you gave them credit upon?

A. Upon their own notes—the first one due.

Q. Their own individual note?

A. Their own individual note.

ISAAC G. LOMBARD.

Subscribed and sworn to this 25th day of May, A. D. 1888, before me—

PHILIP A. HOYNE,
United States Commissioner for the Northern District of Illinois.

31 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, City of Chicago, }

I hereby certify that on the twenty-fifth day of May, A. D. 1888, before me, Philip A. Hoyne, a United States commissioner in and for the said district, at my office, Nos. 52 and 53 Government building, in the city of Chicago, in the State of Illinois, personally appeared, pursuant to the notice hereto annexed, at ten o'clock a. m. of said day, Isaac G. Lombard, the witness named in the said notice, and Mr. Kleinhans, of Messrs. Blair, Kingsley & Kleinhans, appeared as counsel for the plaintiff and M. Brown, Esq., appeared as counsel for the defendants; and the said Isaac G. Lombard, being by me first duly cautioned and sworn to testify the whole truth and being carefully examined, deposed and said as appears by the deposition hereto annexed.

And I further certify that the said deposition was then and there reduced to writing by me and was, after it had been printed out, subscribed by the witness, and that the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the court, as required by law.

And I further certify that the said witness resides at Chicago aforesaid, more than one hundred miles from Grand Rapids, in the western district of Michigan, the place where this cause is to be tried.

And I further certify that I am not of counsel or attorney to either or any of the parties, nor am I interested in the event of said cause.

In testimony whereof I have hereunto set my hand and seal, at

[COMMISSIONER'S SEAL.] the city of Chicago, in the said northern district of Illinois, this 25th day of May, A. D. 1888.

PHILIP A. HOYNE,
United States Commissioner for the Northern District of Illinois.

Fees, $13.50, paid by plaintiff.

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Deposition of I. G. Lombard. Filed May 28, 1888. C. L. Fitch, clerk.

32 Chas. L. Fitch, clerk U. S. circuit court.

In reply to yours of ——.

GRAND RAPIDS, MICH., *May* 28, 1888.

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

GENTLEMEN: You will please to take notice that I have this day received, opened, and filed in this cause the deposition of Isaac G. Lombard, taken before Philip A. Hoyne, Esq., a United States commissioner, at the city of Chicago, in the State of Illinois.

Yours resp'y, C. L. FITCH, *Clerk.*

To Messrs. Blair, Kingsley & Kleinhans, att'ys for plaintiff; Messrs. Smith, Nims, Hoyt & Erwin, att'ys for def'yt White; M. Brown, Esq., att'y for def't Dowling, and T. J. O'Brien, Esq., att'y for def'ts Ferry.

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Notice of filing deposition. Filed May 28, 1888. C. L. Fitch, clerk.

33 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

The President of the United States of America to Frank H. White:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said district, on Tuesday, the fifth day of June, A. D. 1888, at 10 o'clock a. m. of said

day, then and there to testify and give evidence in a case to be tried wherein The National Bank of America, at Chicago, is plaintiff and Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry are defendants, on behalf of said plaintiff; and bring with you and have then and there any book, paper, record, or memoranda showing or purporting to show sales made by the firm of F. H. White & Co. at any time during the existence of said firm which is in your possession or control or custody or in that of the E. P. Ferry Lumber Company, and also the bank books, pass books, and check stubs showing the banking business of the firm of F. H. White & Co. during the years from 1873 to 1883, inclusive. Hereof fail not under the penalty of what may befall you thereon.

Seal of the Circuit Court of the United States for the Western District of Michigan, Southern Division.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and the seal of said circuit court, at Grand Rapids, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and twelfth.

CHARLES L. FITCH, *Clerk.*

BLAIR, KINGSLEY & KLEINHANS,
Attorneys for Plaintiff.

34 WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 2d day of June, A. D. 1888, I served on Frank H. White, at Hesperia, Newaygo county, in my district, by delivering to him personally a true copy of said subpœna and at the same time showing him the original, with the seal of the court thereon impressed, and tendering him his *per diem* fees, $1.50, and mileage, $6.50.

D. R. WATERS,
U. S. Marshal,
By D. L. CAMPAU, *Deputy.*

[Endorsed:] No. 2213. Circuit court of the United States, western district of Michigan, southern division. Nat. Bank of America, at Chicago, *vs.* Frank H. White *et al.* Subpœna. Filed Jun- 4, 1888. C. L. Fitch, clerk.

35 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

The President of the United States of America to Andrew Thomson:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said

district, on Tuesday, the 5th day of June, A. D. 1888, at 10 o'clock a. m. of said day, then and there to testify and give evidence in a case to be tried, wherein The National Bank of America, at Chicago, is the plaintiff and Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry are the defendants, on behalf of said plaintiff.

Hereof fail not under the penalty of what may befall you thereon.

Witness the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, and the seal of said circuit court, at Grand Rapids, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and twelfth.

Seal of the Circuit Court of the United States for the Western District of Michigan, Southern Division.

CHARLES L. FITCH, *Clerk.*

BLAIR, KINGSLEY & KLEINHANS,
Attorneys for Plaintiff.

WESTERN DISTRICT OF MICHIGAN, *ss:*

36 I hereby certify and return that on the 1st day of June, A. D. 1888, I served the within writ upon the within-named Andrew Thomson, at Grand Haven, in said district, by delivering to him a copy, with the seal endorsed as hereon impressed, and by reading to him said writ and by showing the seal of the court impressed thereon; also I further return that I paid the said Thomson the sum of $4.80, in lawful money, for his travel and one day's attendance.

D. R. WATERS,
U. S. Marshal.

[Endorsed:] No. 2213. Circuit court of the United States, western district of Michigan, southern division. Nat'l B'k of America, at Chicago, *vs.* Frank H. White *et al.* Suopœna. Filed Jun. 4, 1888. C. L. Fitch, clerk.

37 March Term, A. D. 1888.

TUESDAY, *June* 5, 1888.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 2213.

This cause coming regularly on for trial, the following jury was called and sworn, to wit, Giles Markham, J. V. Armstrong, Joseph H. Wetmore, Oscar Sherburne, Levi Sparks, Edward D. Benedict,

Edwin Thayer, Lewis G. Dunton, Fred. Thomas, M. J. Wrisley, Willard Barnhardt, and Charles C. Bunting, who sat together in the jury seats and heard the evidence this day adduced.

38 March Term, A. D. 1888.

WEDNESDAY, *June* 6, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 2213.

The jury heretofore empanneled in this cause sat together in the jury seats and heard the conclusion of the evidence and the charge of the court, and thereupon, without leaving their seats, say upon their oath that the said defendants did undertake and promise in manner and form as the said plaintiff hath in its declaration in this cause alleged, and the said jurors assess the damages of the said plaintiff on occasion of the premises at the sum of eight thousand three hundred and twenty-seven dollars and sixty-nine cents ($8,327.69) over and above its costs and charges by it about its suit in this behalf expended; therefore it is considered by the court that the said plaintiff do recover against the said defendants the said sum so assessed as aforesaid, together with its costs and charges aforesaid, to be taxed, and that it have execution therefor.

And upon application of counsel for said defendants Frank H. White and George E. Dowling it is thereupon ordered that they be, and are hereby, allowed ninety days from this date in which to prepare and settle a bill of exceptions in this cause, and that in the meantime all further proceedings on the part of the plaintiff in this cause, except the taxation of costs, be, and the same hereby are, stayed.

39 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

The said defendant, George E. Dowling, by M. Brown, his attorney, respectfully requests the court to charge the jury as follows:

1.

That it appears by the evidence in this case that the notes in suit were made and delivered to the plaintiff in fraud of the rights of the defendant George E. Dowling, who was at the time a member of the firm of F. H. White & Co.

2.

The burden of proof is upon the plaintiff to show that it is a *bona fide* holder of the notes in question, and that it purchased them in the usual course of business and paid for them a valuable consideration.

3.

The evidence in this case shows that as between the plaintiff and defendant Dowling defendant Dowling is only an accommodation maker of the notes in suit. Therefore, if the plaintiff had, before or at the time it purchased the notes in suit and paid the consideration therefor, notice that the firm of F. H. White & Co. was an accommodation maker of said notes in suit, then the plaintiff cannot recover in this cause against defendant Dowling.

40 4.

While witness Lombard testifies that he, as agent for the plaintiff, being the cashier of the Fifth National Bank of Chicago, Ills., at the time it is said to have purchased said notes and president of the plaintiff at the time it claims to have purchased said notes, did not have notice of the weakness of the paper in question, there is some evidence in this cause tending to prove that the plaintiff did have such notice.

5.

The plaintiff did not purchase the notes in question in the usual course of business.

6.

The burden of proof in this trial is upon the plaintiff to show that the firm of F. H. White & Co. was at the time the notes in suit were signed in the name of that firm by Edward P. Ferry a trading partnership.

7.

The evidence in this cause does not show that the firm of F. H. White & Co. was ever a trading copartnership.

8.

Upon the whole evidence in this cause your verdict must be one of no cause of action in favor of defendant Dowling.

M. BROWN,
Att'y for Def't Dowling.

The foregoing requests are each and all refused for the reason that the court, being of opinion that the plaintiff is entitled to the verdict upon the facts proven in this case, does not deem it proper to give any other than direct instructions.

H. F. SEVERENS, *Dist. Judge.*

[Endorsed:] No. 2213. The circuit court of the United States for the west. dist. of Mich., so. div. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Requests to charge. Filed June 6, 1888. C. L. Fitch, clerk.

41 UNITED STATES OF AMERICA:

The Circuit Court of the United States, Sixth Circuit, Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY, Defendants.

STATE AND WESTERN DISTRICT OF MICHIGAN, } ss:
County of Kent, }

Denis L. Campau, deputy marshal, being sworn, says that in the above-entitled cause he served a subpœna in behalf of the plaintiff on defendant White, at Hesperia, in the county of Newaygo, Michigan; that he actually travelled 85 miles to make such service, and that he actually and necessarily and in good faith paid out and expended in actual travelling expenses to make such service the sum of twelve & $\frac{65}{100}$ dollars ($12.65), and that the items of such expenditure are hereto attached, and he hereby elects to receive his actual travelling expenses in lieu of the mileage allowed by statute, and asks that an order to that effect be made.

D. L. CAMPAU.

Subscribed and sworn to before me this 8th day of June, 1888.
CHARLES B. BLAIR,
Notary Public, Kent County, Michigan.

Bill of Expenses.

Fare to Montague & ret.	3 40
Hotel at "	3 00
Livery to Hesperia, 25 miles	5 00
Hotel at "	1 00
Telephone	25
	$12 65
	25
	$12 40

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. Nat'l Bank of America, at Chicago, *vs.* Frank H. White *et al.* Affidavit of dep'y marshal of actual travelling expenses and election. Filed Jun- 11, 1888. C. L. Fitch, clerk.

42 In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago, Pl'ff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Def'ts.

Plaintiff's Bill of Costs.

Attorney fees, viz:

	$ Cts.	$ Cts.
On jury trial	20 00	
On depositions, etc.	2 50	
		22 50
Disbursements, viz:		
Clerk's fees		12 00
Marshal's fees, mileage, etc., on service of process	16 78	
" " " " " subpœna Thomson	2 54	
Ditto White, actual expenses allowed by court and service of subpœna	12 90	
		32 22
Cost of taking depositions		13 50
Affidavit to bill of costs	25	
Taxation of costs	25	
Witness fees, viz:		
Andrew Thomson, 1 day and 34 miles travel	4 90	
Frank White, 1 " 60 "	7 50	
		12 90
	12 90	
Total		$93 12

STATE AND WESTERN DISTRICT OF MICHIGAN, *County of Kent,* } ss:

Jacob Kleinhans, being duly sworn, says that the foregoing items of costs charged as disbursements have actually been paid or
43 the liability therefor incurred and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend and were deemed material and necessary, and they respectively travelled the number of miles and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used or necessarily and in good faith obtained for use.

J. KLEINHANS.

Sworn to and subscribed before me this 9th day of June, A. D. 1888.

CHARLES B. BLAIR,
Notary Public, Kent Co., Michigan.

To Messrs. Smith, Nims, Hoyt & Erwin, att'ys for def't White; to T. J. O'Brien, Esq., att'y for def't Ferry; to M. Brown, Esq., attorney for def't Dowling:

Take notice that the foregoing is a copy of the plaintiff's bill of costs proposed to be taxed and of the affidavits to be read in support thereof, and that application will be made to the clerk of the said court to tax the same, at his office, on the 20th day of June, A. D. 1888, at 10 o'clock a. m.

Dated this 9th day of June, A. D. 1888.

BLAIR, KINGSLEY & KLEINHANS,
Attorneys for the Plaintiff.

STATE AND WESTERN DISTRICT OF MICHIGAN, } ss:
Southern Division, County of Kent, }

Charles B. Blair, being duly sworn, says that on the 11th day of June, A. D. 1888, at 10 o'clock a. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon Smith, Nims, Hoyt & Erwin, attorneys for the def't White,
44 and a copy upon M. Brown, Esq., attorney for def't Dowling, by depositing the same in the post office at Grand Rapids, Michigan, securely sealed, properly stamped, and duly directed to said parties respectively at their proper and respective places of abode, and the same being their proper post office addresses, to wit, Muskegon and Big Rapids, Michigan.

CHARLES B. BLAIR.

Sworn to and subscribed before me this 19th day of June, A. D. 1888.

J. C. SHINKMAN,
Notary Public, Kent Co., Mich.

I consent to the taxation of the within bill of costs at the sum of $93.12.

Dated this 9th day of June, A. D. 1888.

T. J. O'BRIEN,
Att'y for Def't Ferrys.

[Endorsed:] No. 2213. The circuit court of the United States for the western division of Michigan, s'n div'n. Nat'l Bank of America, at Chicago, *vs.* Frank H. White *et al.* Taxed bill of costs for plaintiff. Clerk's office, June 20, A. D. 1888. I do hereby tax the costs of the plaintiff at the sum of ninety-three dollars and twelve cents. C. L. Fitch, clerk. Blair, Kingsley & Kleinhans, attorneys for pl'ff. Filed this 20 day of June, A. D. 1888. C. L. Fitch, clerk.

45 UNITED STATES OF AMERICA:

The Circuit Court of the United States, Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

In this cause it is hereby stipulated and agreed that all proceedings may continue to be stayed for the period of 30 days from the 3rd day of September, A. D. 1888.

Dated Aug. 25, 1888.

BLAIR, KINGSLEY, & KLEINHANS,
Att'ys for Pl'ff.

M. BROWN, *Att'y for Def't Dowling.*

SMITH, NIMS, HOYT & ERWIN,
Attorneys for Def't White.

T. J. O'BRIEN, *Att'y for E. P. & T. W. Ferry.*

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Stipulation. Filed Aug. 31, 1888. C. L. Fitch, clerk.

46 March Term, A. D. 1888.

FRIDAY, *September* 4, 1888.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

On reading the stipulation of the parties to this cause, signed by their respective attorneys and heretofore duly filed, it is ordered that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same hereby is, extended thirty days from the third day of September instant, and that in the meantime the stay of proceedings heretofore ordered in this cause continue in full force.

47 October Term, A. D. 1888.

WEDNESDAY, *October* 3, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

By consent of the parties in this cause it is ordered that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same hereby is, extended for thirty days from and after the fourth day of October instant, and that in the meantime the stay of proceedings in this cause continue in full force.

48 October Term, A. D. 1888.

MONDAY, *November* 5, 1888.

The court, remaining open under the provisions of title XXVI of the Revised Statutes and also in pursuance of its adjournment from the 3rd day of November instant, was this day opened for the transaction of regular business.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

In this cause, by consent of all the parties thereto, it is hereby ordered that the time for settlement of a bill of exceptions in this cause be, and the same hereby is, extended for sixty days from this date, and that in the meantime the stay of proceedings heretofore granted in this cause remain in full force.

49 October Term, A. D. 1888.

FRIDAY, *January 4th*, 1889.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

By consent of counsel for the respective parties it is hereby ordered that the time for the settlement of a bill of exceptions in this cause be extended until the first day of March next, and that in the meantime the stay of proceedings in this cause continue in full force.

50 At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, begun and held at the city of Grand Rapids, in said district, in the United States court-rooms, on Tuesday, the fifth day of March, in the year of our Lord one thousand eight hundred and eighty-nine and of the Independence of the United States of America the one hundred and thirteenth.

Present: The Honorables Henry F. Severens and Henry B. Brown, district judges.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

On application of the defendants and by consent of counsel for the plaintiff it is ordered that the time heretofore granted in which to settle a bill of exceptions be, and the same hereby is, extended in this cause until the first day of June next, and that in the meantime the stay of proceedings heretofore granted in this cause remain in full force.

51 NAT. B'K OF AMERICA
vs.
DOWLING.

Blair, Kingsley & Kleinhans, attorneys.

GRAND RAPIDS, MICH., ——, 188–.

Hon. M. Brown, Big Rapids, Mich.

DEAR SIR: Your favor of the 25th inst. is at hand. We will consent to the extension of time, as requested, until June 1st. We hope the matter may be settled within this period, as the writ of error ought to be returnable to the next term of the Supreme Court.

Yours truly, BLAIR, KINGSLEY & KLEINHANS.

(Dictated.)

M. Brown, counsellor-at-law.

BIG RAPIDS, MICH., *Feb.* 28, 1889.

Hon. T. J. O'Brien, att'y-at-law, Grand Rapids, Mich.

MY DEAR SIR: I wish you would kindly see that the order mentioned in the inclosed letter of B, K. & K. is entered.

Yours, &c., M. BROWN.

[Endorsed:] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. National bank of America, at Chicago, *vs.* George E. Dowling *et al.* File and enter order. H. F. S. Mar. 5, '89. Stipulation to extend time. Filed Mar. 5, 1889. C. L. Fitch, clerk.

52 March Term, A. D. 1889.

TUESDAY, *May* 28, 1889.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

By consent of the attorneys for the respective parties, it is hereby ordered that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same hereby is, extended for the period of twenty days from and after the first day of June next, and that in the meantime the stay of proceedings heretofore granted in this cause be, and the same hereby is, continued in full force.

53 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.

At a session of said court held at the court-house, in the city of Grand Rapids, in said western district of Michigan, on the 5th day of June, 1888, before the Hon. Henry F. Severens, district judge, one of the judges of said circuit court, the issue joined between the parties in this cause came on to be tried by a jury for that purpose duly empaneled of lawful jurors, at which day came as well the said parties by their respective attorneys, and the said jurors were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

The plaintiff, to maintain the issue on its part, called Andrew Thompson as a witness, who, being duly sworn, testified as follows: That he resided at Grand Haven, Michigan, and had been in the employ of Ferry & Bro. for 20 years, during the time of such residence, as book-keeper; that he knew the firm of F. H. White & Co.; it was located at Montague, in Muskegon county, Michigan, and was composed of Edward R. Ferry, Frank H. White, and George E. Dowling. The business of the firm was manufacturing lumber.

The notes upon which this suit was brought were then shown to the witness and he was asked if he knew the signatures to them. The witness stated that the signatures to the notes of F. H. White & Co. *was* in the handwriting of Edward P. Ferry, and that
54 said notes were endorsed "Ferry & Bro." in the handwriting of Thomas W. Ferry.

Witness was then shown a paper, and testified that the signature and the endors-ment *was* in F. H. White's handwriting. This paper

was a draft purported to be drawn on F. H. White & Co. to the order of F. H. White, and both the signature and the endorsement thereon were in F. H. White's handwriting, and the paper was for the sum of three thousand seven hundred fifty-two dollars and six cents.

Witness was then shown another paper, dated May 5th, 1881, which proported to be a draft for $4,106.32, drawn on Ferry & Bro. by F. H. White & Co., and he testified that the signature of the drawer was in the handwriting of F. H. White and the endorsement was in the handwriting of Edward P. Ferry.

Another paper was shown to the witness, who stated that the signature of F. H. White & Co. was in the handwriting of F. H. White. This paper was a draft for twenty-eight dollars and twenty-two cents, payable to the order of the Northwestern Oil Company, and was drawn by F. H. White & Co. upon Ferry & Bro., which firm was composed of the defendants Edward P. Ferry and Thomas W. Ferry.

This paper was put in evidence, marked "Exhibit M," and was in the same form as the preceding one.

Witness was shown another draft, for $123.41, drawn by F. H. White & Co. on Ferry & Bro. to the order of E. B. Preston, and testified that the signature of the drawer was in the handwriting of F. H. White.

Witness was shown another draft drawn by F. H. White & Co., payable to the order of C. L. Norris, and was for the sum of forty-five dollars, and stated that the name of F. H. White & Co. was in the handwriting of F. H. White.

Witness was shown another paper, for the sum of one thousand dollars, payable to the order of C. A. Hammond, cashier,
55 drawn by F. H. White & Co. upon said Ferry & Bro., and stated that the firm name of F. H. White & Co. was signed thereto by Frank H. White.

Witness was shown another paper, for the sum of nine hundred dollars, signed by F. H. White & Co., drawn upon said Ferry & Bro., and stated that the signature thereto was in the handwriting of F. H. White.

Other papers *was* shown to the witness as follows: One for five hundred seven dollars and ninety-four cents, drawn upon Ferry & Bro., signed by the firm name of F. H. White & Co., payable to the order of F. H. White; one for three hundred sixty-nine dollars and fifteen cents, drawn upon Ferry & Bro. by F. H. White & Co., to the order of G. E. Dowling; one for three thousand forty-two dollars and six cents, drawn upon Ferry & Bro. by F. H. White & Co., to the order of G. E. Dowling; one for five hundred seven dollars and ninety-four cents, to the order of George E. Dowling, drawn by F. H. White & Co. on Ferry & Bro.; one for eight hundred dollars, drawn on Ferry & Bro. by F. H. White & Co., payable to the order of C. A. Hammond, cashier; one for thirty dollars and eighteen cents, drawn on Ferry & Bro. by F. H. White & Co.; one on Ferry & Bro., signed by F. H. White & Co., in favor of the Ottawa iron works; one in favor of Ferry, Dowling & Co. for two thousand three hundred and

twenty-five dollars and twenty-eight cents and drawn upon Ferry & Bro., signed by F. H. White & Co.; one for eighteen dollars and ninety-five cents, signed by F. H. White & Co., in favor of William Cox, and drawn upon Ferry & Bro.; one for one thousand fifteen dollars and eighty-eight cents, in favor of E. P. Ferry, signed by F. H. White & Co., and drawn upon Ferry & Bro.; one for seventy-five dollars, in favor of S. B. White, on Ferry & Bro., signed by F. H. White & Co.; one for two thousand five hundred nineteen dollars and thirty-seven cents, in favor of E. P. Ferry, upon Ferry & Bro., signed by F. H. White & Co.

Witness testified that the signatures to all these papers were in the handwriting of the defendant Frank H. White, except the one for $3,042.06, which was in the handwriting of George E.
56 Dowling; also that the endorsement of the name of G. E. Dowling on the draft for $369.15 was in the handwriting of George E. Dowling.

Upon cross-examination the attention of the witness was called to the two notes in suit, and the witness stated that the bodies of these notes were filled out in the handwriting of his wife; that they were so filled out at his request; that he requested them to be so filled out, because the defendant Thomas W. Ferry instructed him to have notes that were to be discounted filled out in the handwritings of different persons; that these notes were signed by the firm name of F. H. White & Co., by Edward P. Ferry, at Park City, Utah, and sent to witness by mail; that when they came to him they were signed in blank by the name of F. H. White & Co.; that, at the request of said Thomas W. Ferry, he caused these notes to be filled up as stated and sent them by mail to the bank at Chicago for the purpose of renewing notes that had previously been discounted by the bank for Ferry & Bro.; that at the time these notes were filled out and forwarded to Chicago the witness did not credit them in any way upon the books of Ferry & Bro. to F. H. White & Co.; that they appear only as bills payable upon the books of Ferry & Bro. the same as their own notes.

To further maintain the issue on its part the plaintiff called as a witness the said Frank H. White, who testified in substance as follows: That he was a member of the firm of F. H. White & Co. and was its general manager and kept the books of the firm.

Witness was shown the so-called drafts which had been shown to witness Thompson and identified by him, and stated that they were drawn by him (the witness); that the eight-hundred-dollar draft was drawn for money to pay the men who were in the employ of the firm of F. H.
White & Co.; that the payee therein named was the cashier of
57 the bank at Whitehall, Michigan; that this so-called draft bore date May 10th, 1882; that the one for five hundred seven dollars and ninety-four cents in favor of G. E. Dowling — his profits in the firm of F. H. White & Co. the first year said firm did business; that the interests in said firm were as follows: said Edward P. Ferry owned a one-half interest and witness a one-fourth interest; that the so-called draft of three thousand forty-two dollars and six cents was drawn for the purpose of paying said Dowling his interest in

the profits of said firm for another year; that the so-called draft for two thousand three hundred twenty-four dollars and twenty-eight cents in favor of Ferry, Dowling & Co. was drawn to settle an account with that firm; that the firm of Ferry, Dowling & Co. was composed of the said George E. Dowling, Edward P. Ferry, and Thomas W. Ferry; that the said firm was engaged in the lumber business at Montague, Michigan, and in connection with their business they kept a general store; that the said George E. Dowling was in charge of the business of Ferry, Dowling & Co.; that the so-called draft for sixty-five dollars in favor of the Ottawa iron works was drawn for the purpose of paying for repairs to the mill of defendants; that the firm of F. H. White & Co. used printed letter-heads upon which were printed "F. H. White & Co., manufacturers of lumber, Montague, Michigan;" that the so-called draft for three thousand seven hundred fifty-two dollars and six cents, payable to the order of witness, was made to pay witness his one-fourth of the profits of the firm business; that the so-called draft for thirty dollars and eighteen cents in favor of Dennis Smith & Co. was made to pay for mill supplies; that the so-called draft for the sum of one hundred twenty-three dollars and forty-one cents, in favor of E. B. Preston, was made to pay for belting for the mill belonging to
58 the firm of F. H. White & Co., and this draft passed through the bank; that the so-called draft of forty-five dollars, in favor of C. L. Hayes, was made to pay for friction paper which was used in the mill of the firm of F. H. White & Co., and this draft passed through the bank; that the draft for twenty-eight dollars and twenty-two cents, in favor of the Northwestern Oil Company, went through the bank and was made to pay for oil used in the firm's mill; that the so-called draft for nine hundred dollars, in favor of C. A. Hammond, cashier, was cashed at the Whitehall bank and was made for the purpose of obtaining money to pay men employed by the said firm of F. H. White & Co., and that the one made for one thousand dollars, to the order of said Hammond, cashier, was for the same purpose; that the draft of eighteen dollars and ninety-five cents, in favor of William Cox, was made to pay for files used in the mill; that the one for five hundred seven dollars and ninety-four cents, payable to the order of witness, was made to pay witness profits in his firm; that there was an order for four thousand one hundred six dollars and thirty-two cents, made by the firm of F. H. White & Co. in favor of E. P. Ferry, to balance an account that said Ferry had against that firm, and another of one thousand fifteen dollars and eighty-eight cents to pay said Ferry his interests in the profits of same firm; also another for two thousand five hundred nineteen dollars and thirty-seven cents, in favor of E. P. Ferry, to pay a balance due him for profits, and one for seventy-five dollars, payable to witness and charged to him on the books of the firm; also another for one thousand five hundred dollars and thirty-four cents, in favor of the said George E. Dowling, to enable said Dowling to pay a note given by him to said Edward P. Ferry for a part of his, Dowling's, interest in the said
59 firm of F. H. White & Co.; that when the witness and the

said George E. Dowling purchased their interests in the firm of F. H. White & Co. from said Edward P. Ferry they gave their notes for the purchase price; another for one thousand seven hundred ten dollars, payable to George E. Dowling, which was made to pay said Dowling for a portion of his share in the profits of the firm of F. H. White & Co.

The witness testified further that the firm of F. H. White & Co. had drawn a draft on Ferry & Bro. in favor of Ferry, Dowling & Co. for $5,305.03. This was drawn to settle a balance between the two firms of F. H. White & Co. and Ferry, Dowling & Co., I think in 1875. All of F. H. White & Co.'s pay for sawing came through Ferry, Dowling & Co., and every pay-day they would go up and get the money and settle up in that way. It must be some balance Ferry, Dowling & Co. furnished the money and they would be paid back by drafts on Ferry & Bro., for whom F. H. White & Co. were sawing logs by the thousand. F. H. White & Co. also drew a draft on Ferry & Bro. in favor of S. H. Lasley & Co. for $1,862.57.

Witness testified further that during the time said firm of F. H. White & Co. did business it also drew orders or drafts upon Ferry & Bro. as follows: One for fifteen thousand two hundred forty-three dollars and eighty-eight cents in favor of Ferry, Dowling & Co.; one for three thousand seven hundred thirty-five dollars in favor of F. H. White; one for four thousand four hundred fifty-two dollars and sixty-nine cents in favor of E. P. Ferry; one for four thousand one hundred thirty-six dollars and twelve cents in favor of E. P. Ferry; one for three thousand seven hundred and thirty-five dollars in favor of George E. Dowling; that this firm of F. H. White & Co. had a bills payable account and made notes during the time of its existence as follows:

60 One for ten dollars, to settle an account with one Knowls for work done for the firm; that it made another note for three hundred forty dollars; one for thirty dollars to settle a labor account; one for forty dollars for the same purpose; that it made another note for $45.00; one for two hundred and twenty-five dollars for the same purpose; also another note for $400.00; one for three hundred two dollars and seventy-five cents for the same purpose; one for eighty-seven dollars and fifty cents to settle the difference in a horse trade; one for one thousand dollars to A. Ballard to secure him for money advanced to the firm upon a contract the firm had with him to saw lumber by the thousand; one for fife hundred and twenty dollars for repairs in the mill; one for six hundred ninety-nine dollars and twenty-one cents, given for repairs done upon the firm's mill at Montague, and one for eight hundred dollars for insurance upon the same property; also another note for $2,000; that sometimes the firm was not able to collect the saw bills for persons for whom it was sawing lumber by the thousand, and for that reason was compelled to make notes to raise money to pay for labor, and for that purpose made two notes at different times for one thousand dollars each. These notes made for this purpose were discounted at the bank. The firm had outstanding at the end of one year $5,500.00 in notes. On the 4th day of August, 1883, witness made

a firm note for fifty-five hundred dollars for the purpose of raising money to pay two drafts drawn upon the firm by said Edward P. Ferry. These notes were sold to one Frank Weston and the money used for the purpose of paying Mr. Ferry's drafts. The payment of these notes was secured to Mr. Weston by a lien given by said Edward P. Ferry upon certain lumber that he owned at Montague, Michigan; that said Edward P. Ferry made quite a number of drafts upon said firm, and usually, if said firm was unable to pay such drafts when they were presented, witness made firm notes to raise the money to
61 do so; that during the time said firm did business in originals and renewals it made about (17) seventeen notes; that persons and firms to whom the firm of F. H. White & Co. became indebted for machinery, tools, and supplies used in its business of sawing lumber during the time it existed drew drafts upon it for such indebtedness. The Stearns Manufacturing Company of Erie, Pennsylvania, drew one such draft for two hundred sixty-eight dollars and eighty-one cents; that said firm of F. H. White & Co. kept a bank account at the bank in Whitehall, Michigan; that it deposited money in said bank and checked it out; that the mill owned and operated by the firm of F. H. White & Co. was originally built by said Edward P. Ferry. He owned it at the time of the organization of the firm. He conveyed a one-fourth interest in the mill to the said George E. Dowling and one-fourth interest to witness. Except for the first year or two, the firm sold some lath and pickets on its own account; I can't give the amount; that the mill was of sixty to sixty-five thousand per day capacity and cut from ten to thirteen million feet of lumber annually; that the firm employed from twenty-eight to thirty-five men daily, and was organized in 1873, as shown by the articles of copartnership hereinafter set forth. Mr. Ferry owned the largest interest in the firm and really controlled it, but witness was manager under him and received instructions from him. Mr. Dowling lived at Montague and was the manager of the firm of Ferry, Dowling & Co. The offices of these two firms were about sixty rods apart. The books of the firm of F. H. White & Co. were accessible to all the partners.

The witness stated on cross-examination that the business of the firm of F. H. White & Co. during the whole time of its existence was manufacturing lumber by the thousand for other people; that it operated what was known as "a custom mill," and did no
62 other business; that it received from two to three dollars per thousand from customers for sawing lumber; that its mill was run by steam power; witness never knew of the making or discounting of the notes in suit until after their maturity; that the firm of F. H. White & Co. was in the habit of getting money to meet their expenses of its business from the firm of Ferry, Dowling & Co. when lumber was being sawed for Ferry & Bro.; at the end of the year F. H. White & Co. would draw upon Ferry & Bro. and in favor of Ferry, Dowling & Co. for the amount of money thus obtained for the purpose of settling the balance due Ferry, Dowling & Co., and this is the way the so-called draft before mentioned for the sum of fifteen thousand two hundred forty-three

dollars came to be drawn. The money was obtained of Ferry, Dowling & Co. at the request of Edward P. Ferry, and settled for at the end of the year. All the drafts, "so called," drawn by the firm of F. H. White & Co. during the time it did business were drawn upon Ferry & Bro., because that firm owed the firm of F. H. White & Co. for sawing lumber by the thousand for it; that about the time that F. H. White & Co. commenced business a book of blank forms was prepared at the suggestion of E. P. Ferry for that purpose. All of the drafts, so called, drawn were written upon these blanks, except the one written upon a sheet of our letter paper.

To further maintain and prove the issue on its part the plaintiff read the deposition of Isaac G. Lombard, taken at the city of Chicago, Ill. Witness testified as follows: That he resided in the city of Chicago; that he was acquainted with the plaintiff and was its president; that he was acquainted with the Fifth National Bank of Chicago during the time of its existence and was the cashier of that bank; that the charter of the Fifth National bank ex-
63 pired and it went into liquidation on the thirty-first day of December, 1882, and the plaintiff commenced business the same day. These banks were composed of nearly the same stockholders and nearly the same directors, and the plaintiff bought such paper of the Fifth National bank as was satisfactory to it; that witness is acquainted with the firm of Ferry & Bro. and had business dealings with that firm in behalf of the Fifth National bank and also on behalf of the plaintiff. These relations commenced as far back as December, 1873; Ferry & Bro. had an account with the Fifth National bank. That bank discounted for them. Witness was acquainted with the firm of F. H. White & Co. and discounted its paper.

Counsel for the plaintiff asked this witness the following question:

Q. I wish you would state, Mr. Lombard, what paper of the firm of F. H. White & Co. the Fifth National bank discounted at any time, giving the date of the paper, the date you discounted it, and state also the amounts and maturity of the paper and all particulars of the papers.

Counsel for the defendant Dowling objected to the question before the commissioner upon the ground that it was incompetent and immaterial.

The said court at the trial overruled said objection because the reasons for making the same were not more specific; to which ruling the counsel for the defendant Dowling then and there duly excepted.

Witness then asked, Do you want me to give the history all through the transactions that we had in discounting paper for F. H. White & Co.?

Counsel for plaintiff answered, "Yes."

The witness answered: On December 10th, 1873, we discounted for Ferry & Bro. a note of F. H. White & Co., amount ten
64 thousand dollars, dated December 10th, 1873, and due March

13th, 1874; October 16th, 1878, we discounted paper made by the same parties, endorsed by the same parties, amount five thousand dollars, dated October 16th, 1878, and due January 16th, 1879; March 6th, 1880, we discounted five thousand dollars for the same parties, dated March 6th, due June 7th, 1880; June 10th, 1880, five thousand dollars, dated June 9th and due September 10th, 1880; July 2nd, 1880, five thousand dollars, dated July 1st and due October 2nd; October 9th, 1880, five thousand eight hundred forty-seven dollars and thirty-one cents, dated October 8th, 1880, and due January 9th, 1881; January 18th, 1881, five thousand six hundred and twenty-one dollars and forty-eight cents, dated January 17th, 1881, and due April 20th, 1881; February 19th, five thousand four hundred and eighty-six dollars and thirty-two cents, dated February 18th, due May 22nd, 1881; April 20th, 1881, five thousand five hundred ninety-four dollars and thirty-eight cents, dated Apr. 19th, 1881, due July 21st; July 21st, 1881, dated July 20th, 1881, five thousand dollars, and due October 21st, 1881; August 20th, 1881, fifty-five hundred dollars, dated August 19th and due November 20th; October 21st, 1881, fifty-five hundred dollars, dated October 20th and due January 21st, 1882; November 19th, 1881, fifty-five hundred dollars, dated November 18th, due February 19, 1882; January 21, 1882, fifty-five hundred dollars, dated December 19th, 1881, and due April 22nd, 1882; February 18th, 1882, fifty-five hundred dollars, dated February 16th, 1882, due May 20th, 1882; April 22, 1882, fifty-five hundred dollars, dated April 21st, 1882, and due July 23, 1882; May 20th, 1882, fifty-five hundred dollars, dated May 18th and due August 19th, 1882; July 22, 1882, fifty-five hundred dollars, dated July 21, 1882, and due October 22, 1882; August 19, 1882, fifty-five hundred dollars, dated August 17th, 1882, and due November 18th, 1882; October 21, 1882, fifty-five hundred dollars, dated October 19th, 1882, and due January 20th, 1883; No-
65 vember 18th, 1882, fifty-five hundred dollars, dated November 16th, 1882, and due February 17th, 1883. These are the transactions. All of this paper was made by F. H. White & Co. and endorsed by Ferry & Bro.

Witness was shown note dated October 19th, 1882, for fifty-five hundred dollars, made by F. H. White & Co., endorsed by Ferry & Bro., and stated that this is one of the notes in the suit and is one of the notes mentioned in witness' previous statement; that the said Fifth National Bank of Chicago became the owner of it October 21st, 1882; that it was a renewal of a note that was previously made, due October 22nd, mentioned in the previous statement, and that the note last mentioned was also a renewal note. The orginal note was made July 20th, 1881, for fifty-five hundred dollars, and due October 21st, 1881. There were several renewals, and the last one was this note in suit. The firm of Ferry & Bro. had the proceeds of the discount of the original note, and they got them July 21st, 1881. The amount was $5,401.62, which was the face of the note less the discount. There were successive renewals of the original note, until the final outcome was the note of October 19th, 1882, which is one of the notes in suit. The dates of the various renewals and the time

when the Fifth National bank took them and the date of their maturity traced from the original note down to the note of October 19th, 1882, are as follows: The original note was dated July 20, 1881. It was discounted July 21, 1881. It was due October 21, 1881; then it was renewed with a note dated October 20, 1881, which was due January 21, 1882, and it was renewed January 21, 1882, by a note dated December 19th, 1881, due April 22nd, 1882. It was renewed April 22 by a note dated April 21, 1882, and due July 23, 1882, which was renewed July 22, 1882, by a note dated July 21, 1882, and due October 22, 1882, which last note was renewed October 21st, 1882, by this note in suit, dated October 19th, 1882,
66 and due January 20th, 1883. All these renewals were for the sum of $5,500.

Counsel for the plaintiff asked the following question:

Q. They were given that credit August 20, 1881?

Counsel for the defendant Dowling objected to the question upon the ground that it was incompetent; which objection was overruled by the court at the trial, and counsel for said defendant Dowling duly excepted to such ruling.

Answer. August 20, 1881. The amount for which they were given credit was the face of the note, less the usual bank discount.

Whereupon the counsel for plaintiff asked the following question:

Q. Now, you may commence with that original note and trace down its earliest renewals until it resultes in this note of November 18, 1882.

Counsel for defendant Dowling objected to the question for the reason that it is immaterial and incompetent.

The court at the trial overruled said objection because it was not specific enough, and counsel for defendant Dowling then and there duly excepted.

Answer. The original note was due November 20, 1881, and was renewed November 19 by a new note dated November 18, 1881, and due February 19, 1882; which note was renewed February 18th, 1882, by a note dated February 16th, 1882, and due May 18th, 1882; which was renewed May 20, 1882, by a note dated May 18th, 1882, due August 19th, 1882; which was renewed August 19th, 1882, by a note dated August 17th, 1882, and due November 18th, 1882; which was renewed November 18th, 1882, by this note dated November 16th, 1882, and due February 17th, 1883. All these renewals was for the sum of fifty-five hundred dollars.

Counsel for the plaintiff asked the following question:

Q. All these renewals in the case of both notes was paper made by whom?

Counsel for defendant Dowling objected upon the ground
67 that the question was immaterial and incompetent.

The court at the trial overruled said objection because it

was not specific enough, and counsel for defendant Dowling duly excepted.

Answer. Paper made by F. H. White & Co. and endorsed by Ferry & Bro. Now, I say all these renewals were at that time. It appears by the books that some of them were paid by check, and the amount of the discount credited, and some by renewals.

Counsel for the defendant Dowling moved to strike out the last answer because it was incompetent.

The court at the trial overruled said motion because the ground upon which it was based was not stated specific enough before the commissioner who took the deposition of the witness, and the counsel for said defendant Dowling then and there duly excepted.

The witness further testified that these notes were discounted for Ferry & Bro.; they were credited with the amounts and they checked it out before the notes in suit became due. The National Bank of America became the owner of these notes December 31st, 1882. It paid the Fifth National bank for them the face of the notes, less six per cent. interest to maturity. At the time these notes were discounted and purchased the bank had no notice, information, or knowledge of any kind whatever that any of the makers had or claimed to have any defense to them, and had at such times no knowledge, notice, or information of any kind whatever that the paper was not issued and made by the firm of F. H. White & Co. in the usual course of its business.

Witness stated on cross-examination that he was never at Montague, Michigan, and that the payments endorsed upon the backs of the notes were made by the sale of collaterals that were given by Ferry & Bro.

Counsel for defendant Dowling asked the witness the fol-
68 lowing question on cross-examination:

Q. Now, upon this matter that you have testified about, the discounting of notes, etc., appear on the books of the bank, do they not?

A. They do.

Counsel for defendant Dowling moved to strike out all this testimony in relation to the discounting of the notes, or so much thereof as appears on the books of the bank, as being incompetent.

The motion was overruled by the court at the trial, and counsel for defendant Dowling duly excepted.

On redirect examination the witness testified that he participated personally in the discounting of this paper; that he had a recollection on the subject, but it was aided, as to dates, by reference to the bank books; that he recollects, independent of the bank books, that he never took any of said paper after maturity, but that he cannot recollect independent of the books whether the paper was taken shortly after its date or not, nor how long before maturity; that he cannot state from memory how he paid for it nor as to the exact amount paid, but he knows that he paid the face of the paper less the discount.

The notes in suit were then offered in evidence, and counsel for the plaintiff reserved the right to make a computation of the amount due.

The counsel for the plaintiff also offered in evidence all the drafts and notes identified by Andrew Thompson and F. H. White and referred to in their testimony hereinbefore given. These drafts and notes were dated at various times in each of the years during which the firm of F. H. White & Co. was engaged in business, and all of them were dated before the notes in suit were given.

And the counsel for the plaintiff also offered in evidence
69 the bank books and books of account of said firm of F. H. White & Co. The ledger account of the bills payable of said firm is hereto attached, marked "Exhibit A," and the books of the firm of F. H. White & Co. show the following transactions between that firm and the First National Bank of Whitehall: In 1877 the firm made nine deposits aggregating $6,449.54, and drew forty-three checks aggregating $6,429.54. In 1878 the firm made 25 deposits aggregating $14,705.30, and drew 102 checks aggregating $13,750.18. In 1879 the firm made 27 deposits aggregating $15,561.95, and drew 122 checks aggregating $16,118.10. In 1880 the firm made 40 deposits aggregating $29,946.39, and drew 182 checks aggregating $29,698.63. In 1881 the firm made 47 deposits aggregating $32,608.48, and drew 139 checks aggregating $31,916.12. In 1882 the firm made 55 deposits aggregating $30,217.74, and drew 130 checks aggregating $29,768.09, up to December 1st.

The plaintiff's counsel also offered in evidence the two notes in suit, which, with the endorsements thereon, are as follows:

$5,500.00. MONTAGUE, MICH., *Oct. 19th*, 1882.

Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

F. H. WHITE & CO.

Endorsed on the back:

$3,725 paid April 14th, 1886, by I. G. Lombard, trustee.

Interest paid April 14th, 1886 (an agreed amount), by I. G. Lombard, trustee, on with- to May 1st, 1886.

We hereby guarantee the payment of the within note at maturity and waive demand, notice, and protest.

FERRY & BROTHER.

FERRY & BRO.

70 $5,500.00. MONTAGUE, MICH., *Nov. 16th*, 1882.

Ninety days after date we promise to pay to the order of Ferry & Bro. fifty-five hundred dollars at the Fifth National bank, Chicago, value received.

F. H. WHITE & CO.

Endorsed on the back:

Interest (an amount as agreed) paid April 14th, 1886, on within to May 1st, 1886.

We hereby guarantee the payment of within note at maturity, waiving demand, notice, and protest.

FERRY & BRO.

FERRY & BRO.

The plaintiff here rested.

To maintain and prove the issue on their part, the defendant offered in evidence the said articles of copartnership, which are as follows:

Articles of copartnership entered into the first day of February, A. D. 1873, by and between Edward P. Ferry, of Grand Haven, Michigan, and George E. Dowling, Frank H. White, of Montague, Michigan, for the purpose of carrying on the business of sawing lumber, pickets, and lath, at the said village of Montague, in the steam saw-mill lately there erected, witnesseth:

1st. The name and style of the firm shall be F. H. White & Co., and the said firm shall continue during the full term of five years, unless sooner dissolved by mutual consent and agreement; and should the death of either one of the partners occur during the life of this agreement, the surviving partners may, at their option, dissolve the partnership or continue the business during the full term of the time named in this agreement.

2nd. The present fixed capital of the firm is hereby determined to be $35,551.65, of which Edward P. Ferry contributed
71 $16,804.38, George E. Dowling contributed $8,402.19, and Frank H. White contributed $8,402.19, and no part or amount of said capital shall *or* diverted or used otherwise than in the business by either of the partners during the life of this agreement; the profits or losses to be shared according to the respective interests, to wit, Edward P. Ferry, one-half, and George E. Dowling and Frank H. White, each one-quarter.

3rd. Edward P. Ferry and George E. Dowling shall have the care and charge of securing the sawing for the mill, so far as they may be able to make any contracts therefor at current rates, and the supervision of the financial part of the business, and the supervision of the books of said work to be divided between them as they may mutually agree; no charge to be made for their services. Frank H. White is to have full charge of the management of the mill in the detail of the work of sawing, hireing and discharging men and fixing their wages at current rates, according to the respective skill and capacity; to have charge of and keep a set of double-entry books, which shall be opened at any time for the inspection of either of the partners, and shall receive for his services the rate of one thousand dollars per annum to be paid by the firm.

4th. The books of the firm shall be closed of date of January 31st of each and every year, and when the profits, if any, be ascertained and passed to the credit of the respective partners they shall be drawn and applied as follows, to wit: Of the proportion belonging to Dowling and White, each shall be entitled to use an amount not exceeding $1,500 in any one year for the payment to Edward P. Ferry of

their individual indebtedness to him, and the same shall be so applied. Ferry shall be entitled to draw an amount that shall be equal to the amount drawn by both Dowling & White for his own disposal; the balance remaining of the profits may be used by
72 the partners to apply to their increase of capital, as shall, upon consultation and agreement, be deemed for the best interest of the business.

In witness whereof the parties have hereto set their hands the day and year first above written.

EDWARD P. FERRY.
GEORGE E. DOWLING.
FRANK H. WHITE.

To further maintain and prove the issue on their part the defendants called the said GEORGE E. DOWLING as a witness, who testified as follows:

That he resided at Montague, Michigan, and is one of the defendants in this case, and is acquainted with the other defendants; that he is a member of the firm of F. H. White & Co.; that that firm was dissolved on the last day of May, 1883; that it was organized as stated in the articles of copartnership; did business continuously all the time from its organization until the time of its dissolution; that there was no change in the business of the firm during the time that it did business. The firm did the business of sawing lumber and a few lath and pickets by the thousand for other people, and did no other business. The firm manufactured lumber principally for Ferry & Bro., of Grand Haven, Michigan, and A. Ballard, of Chicago.

Q. What, if any, arrangement or arrangements were made between you and Ferry & Bro. in relation to collecting your pay for sawing for them?

A. I think that it was understood, if not agreed, between Mr. Ferry and myself that we should draw orders on Ferry & Bro. for money from time to time, as it might be needed, against the saw bill.

Q. There were quite a number of such papers put in evidence and marked as exhibits in this cause. I show you one marked "Exhibit E." State whether that was one of the orders that was drawn.

A. I conclude it was, although I do not know anything
73 about any of these orders that were put in evidence yesterday except those that passed through my hands.

Q. What can you say as to there being an order book kept in the office of F. H. White & Co?

A. There was one furnished by Mr. Ferry.

Q. What was the purpose of that book?

A. Not anything, excepting to save time in writing them out and to have them uniform in size, etc.

Q. To have them ready to draw?

A. Yes, sir. I think "Exhibit E" is one of those orders.

Q. Were there any such orders drawn upon Ferry & Bro. by the firm during its existence, except for the purpose of collecting a saw bill?

A. No; not to my knowledge.

Q. I show you another order, written upon a letter-head of the firm of F. H. White & Co., which reads as follows: "F. H. White & Co., manufacturers of lumber, Montague, Michigan, July 21st, 1880," which is marked "Exhibit N," and ask you to state, if you can, if you know what that order was drawn for.

A. I don't know.

Q. I think you have already stated, but I will ask you again, why these orders were made upon Ferry & Bro.

A. Because a large amount of the sawing was done for Ferry & Bro.; saw bill charged to them and by them credited to the firm of F. H. White & Co., and the amount drawn from time to time, as required.

Q. State whether your firm ever drew drafts or bills of exchange upon the firm of Ferry & Bro. for any purpose, except for the purpose of taking up what might have been due the firm of F. H. White & Co. for sawing lumber for Ferry & Bro.

A. I think not.

Question by the COURT: Does he mean to say that the balance of account between Ferry & Bro. and F. H. White & Co. was always in favor of F. H. White & Co.?

Answer by the WITNESS: Yes, sir.

74 Witness testified further that he never knew of the notes being made by his firm to take up the drafts drawn upon it by E. P. Ferry for the sum of fifty-five hundred dollars, as that transaction occurred after the dissolution of the firm of F. H. White & Co.

Q. I now call your attention to the two notes in suit. You may state, as near as you can, when you first knew of these notes having been given or learned that they had been given.

A. I think my first knowledge of it was when this suit was brought.

Q. Whether you ever consented in any way to the giving of that paper.

A. I certainly did not.

Q. You have heard the testimony read here yesterday of Mr. Lombard about the renewal of some notes being given previously?

A. Yes, sir.

Q. What can you say upon the subject, of your own knowledge, of any notes of your firm having been given to that bank?

A. I never knew of one.

Q. When was the first information you ever had upon the subject of their being renewals for other notes?

A. Yesterday, from the testimony of Mr. Lombard.

Q. State whether the firm of F. H. White & Co. ever derived any benefit or received any of the proceeds of these two notes in suit.

A. We did not.

Q. Whether they derived any benefit from any of the notes of which these notes were renewals.

A. No, sir.

Q. Whether the- ever had, to your knowledge, any business with Lombard or the bank or banks that he represented.

A. No, sir.

Q. Whether the firm of F. H. White & Co. ever did any business with the Fifth National Bank of Chicago, Illinois.

A. No, sir.

Q. State whether you ever knew of Mr. E. P. Ferry signing notes for the firm of F. H. White & Co.

A. No, sir; I never did until after the dissolution of the firm.

Q. You may state whether he had any authority from the firm, to your knowledge, to sign such paper—express authority.

75 A. No, sir; he never did.

Q. You never gave him any such authority?

A. No, sir.

Q. Nor no other member of your firm, so far as you know?

A. No, sir.

Journal A of the books of F. H. White & Co., at page 161, which was offered and received in evidence, reads as follows:

MONTAGUE, MICHIGAN, *May 19th*, the 1887.

105	Sund's to Ferry & Bro.		$33,165 26
"	For drafts dr'wn on them for following-named:		
107	S. H. Lasley & Co.	1,862 57	
114	Ferry, Dowling & Co.	15,243 88	
122	F. H. White	3,735 00	
34	E. P. Ferry	4,452 69	
34	E. P. Ferry	4,163 12	
35	G. E. Dowling	3,735 00	
123			
103	Stable construction to petty ledg.		248 50
	For men employed building	248 50	
94			
123	Repairs to stable construction		84 00
	For stable carpenters emp'y'd in rep. mill	84 00	
105	Sund's to Ferry & Bro.		139 06
	For lumber sold p'r S. B.:		
110	Temple & Co.	450	
	7,135 ft. culls del. C. H. Cook	31 10	
	2,000 " clear strips 10 ft., 10.00	20 00	
	2,000 " 10-ft. " del. C. E. Cook, 5.00	10 00	
		62 10	
103	Petty ledger	67 71	
116	Cash	9 25	
105	Ferry & Bro. to mill acc't		17 12
92			

76

	For error in ch'g 3,456 ft. culls to C. H. Cook, Feb. 24th	15 55		
	For error in ch'g 315 ft. culls to Sant & Co., Feb. 24th	1 57		
			17 12	
105				
116	Ferry & Bro. to cash			51 10
	For F. H. White's exp. up river, 1876 & '7		50 10	
92	Sund's to mill acc't			66 65
	For culls sold as per S. B.:			
116	Cash		16 00	
103	Petty ledger		46 65	
124	Wilson & Hadue, 200 ft.		1 00	
110	Temple & Co., 600 " to Musgrove		3 00	

The attention of the witness was called to these entries and he was asked to explain them. He answered as follows: This appears to have been a series of six orders drawn on Ferry & Bro. against the amount they owed the firm of F. H. White & Co.

Q. Do you know how they came to be drawn?

A. Yes, sir.

Q. Please state.

A. The first order, in favor of S. H. Lasley & Co., was drawn to settle an account of that firm for supplies furnished from thier store.

Q. What were the supplies furnished for?

A. For the mill that the firm of F. H. White & Co. was operating.

Q. Go on.

A. The next, to Ferry, Dowling & Co., was to settle an account between F. H. White & Co. and Ferry, Dowling & Co. That account was for money and other things furnished to the firm of F. H. White & Co. by mutual understanding for the purpose of operating the mill of F. H. White & Co., for use in payment of labor and purchase of files and saws and such things as the firm of F. H. White & Co. had to have. The order in favor of F. W. White was drawn
77 to pay so much of what was due him as his portion of the profits. The order to George E. Dowling was for the same purpose. The two orders to E. P. Ferry were for the same purpose. I recollect the circumstances disclosed by that entry. It was at the close of about two years' business that had never been fully settled up. There had been no settlement of that business because Mr. Edward P. Ferry was out of health and was out West for the purpose of regaining his health if he could, and the earnings of the mill had accumulated to the extent shown by that entry.

Q. I will ask you to state as a matter of fact whether the firm of F. H. White & Co. ever received notice of the approaching maturity of these notes which have been testified to here by Mr. Lombard.

A. Not to my knowledge. If any such notice had been received

I think I should have known it. It is customary for banks to give such notices; that is a rule in all banks that I have had anything to do with or *or* known anything about. I never knew the rule to be otherwise.

Upon cross-examination by the council for the plaintiff the witness testified as follows:

The signatures of F. H. White & Co. to the two notes in suit here are in the handwriting of Edward P. Ferry. I would not consider that they were his regular signatures. During the time the firm of F. H. White & Co. was in existence I was engaged in the lumber business, shingle business, and merchandising at the village of Montague, Michigan. I did this business as a member of the firm of Ferry, Dowling & Co., of which I had a charge. During the time of the latter part of the existence of the firm of F. H. White & Co. Mr. Edward P. Ferry was in Utah. His residence was at Grand Haven, Michigan. I was in the office of F. H. White & Co. frequently. I saw their books. I did not examine them in detail. They were always open to my inspection so far as I know. I had annual statements from them with the one exception named.
78 The firm of F. H. White & Co. did not have any cash capital originally. We did not need very much cash capital; we had credit at the store of Ferry, Dowling & Co. for hay, oats, and such things as we used in our business. We didn't use any merchandise directly. Whatever credit we needed at Montague we got of Ferry, Dowling & Co. At one time it run to fifteen thousand dollars and at another time to five thousand dollars, and other sums at other times. I think I knew of the firm of F. H. White & Co. issuing a few small notes. I knew they had the book of blank drafts. The pay for sawing lumber for A. Ballard, of Chicago, was sometimes remitted to us in money, sometimes he gave his check on a Chicago bank, and at other times he has brought the money to us in his pocket. He was a frequent visitor at Montague during the time we were sawing for him. He kept his money in Chicago.

Q. What knowledge have you that your firm never did any business with the Fifth National bank or the National Bank of America, at Chicago?

A. I never could see and cannot now see that there was ever any occasion for any business.

Q. Do you know whether they did or did not have —?

A. I think they did not have.

Q. What do you know about it yourself? Was it possible for the firm to have done business there without your knowledge?

A. I do not think it was to any extent.

Q. You think it could not issue a note there without your knowing about it?

A. I think I should have known it.

Q. Do you think that you know of all the notes that were issued by your firm?

A. Probably not; but I think I know in a general way all about what was issued and about what they were for.

On redirect examination the witness testified as follows:

Q. What did you mean when you said you would have
79 known *o* if notes—that you would have known if legitimate notes issued in the legitimate business of the concern?

A. That is what I mean. I couldn't see any reason for issuing them.

Q. Was there any reason why notes should be issued for the purpose of raising money?

A. Not to my knowledge.

Q. The firm simply did a business of sawing lumber at so much a thousand?

A. Yes, and paid their men every thirty days.

—. You say some notes were given for labor to men. Do you recollect why they were given for labor?

A. I think there was a time when it was difficult to squeeze any money out of customers that we had been sawing for, and some two or three small notes were given during those periods. This was at times of financial straights, in 1873, and afterwards.

On recross-examination the witness DOWLING testified as follows:

Q. Do you think you knew all about the firm notes that were issued in the firm business?

A. I had a pretty general idea of what was going on.

To further maintain and prove the issue on their part the defendants called FRANK H. WHITE as a witness, who testified as follows:

Q. Bills payable to E. P. Ferry—note dated August 4th, 1883, to which your attention was called yesterday—you say that was to pay a note that you had given to meet a draft on the firm of E. P. Ferry?

A. Yes, sir.

Q. How long previous, about, to that had the draft been drawn?

—. I couldn't say; but a short time, I presume.

Q. Sixty or ninety days?

A. Yes, I should think so.

Q. I call your attention to the notes in suit (showing witness papers) and ask you whether the firm of F. H. White & Co. derived any benefit from these notes or from any of the proceeds of them, to your knowledge.

A. No, sir.

Q. Whether that firm derived any benefit from any of the
80 notes for which these were given in renewal, as testified to by Mr. Lombard in his deposition.

A. No, sir.

Q. The note there—the Weston note on the books or notes aggregating fifty-five hundred dollars—has no reference to this paper, has it?

A. No, sir.

Q. Not to the notes of which these notes were an outgrowth?

A. No, sir.

On cross-examination by counsel for the plaintiff the witness testified as follows:

Q. Did Mr. Ferry draw on other occasions before this for monies?
A. I think so; yes.
Q. And you raised the money by notes?
A. If I didn't have it I did.

Question by the COURT: What was the state of the account between E. P. Ferry and the firm of F. H. White & Co. at the time these notes in suit were given?

A. He had a credit there, his half. Each one of the other partners also had a credit there, but there was a debit against Ferry & Bro. The firm of F. H. White & Co. owed E. P. Ferry, but Ferry & Bro. owed the firm of F. H. White & Co.

Question by the COURT: What was the extent of the credit to E. P. Ferry at the time when these notes in suit were given?

A. In 1882 he had a balance of four thousand nine hundred seventy-three dollars; that was on January 31st.

Question by the COURT: Was that increased or diminished during the year?

A. It was increased.

Question by the COURT: Can you tell what it was in October and November, 1882?

A. The same amount.

Question by the COURT: And the undivided part of the current year's profits?

A. Yes.

Question by the COURT: In July and August, 1881, what
81 was the state of the account of E. P. Ferry to the firm of F. H. White & Co.?

A. He had a balance of ten thousand nine hundred forty-six dollars, I think.

Question by the COURT: Was that a balance of the previous year's settlement which had not been taken out?

A. Yes; it was brought down. He never drew his.

Question by the COURT: He had not taken that out?

A. No, sir.

Question by the COURT: And the undivided profits of the year for that time?

A. Yes.

On redirect examination the witness testified as follows:

Q. You may state whether this ledger account shows the correct balances against Mr. E. P. Ferry and the firm of F. H. White & Co. from July 31st, 1879, to December 30th, 1882.

A. Yes, sir; that is a correct account between E. P. Ferry and F. H. White & Co.

This ledger account was received in evidence, hereto attached, and marked "Exhibit B."

To further maintain and prove the issue on their part, the defendants recalled the witness GEORGE E. DOWLING, who testified as follows:

Q. State whether the firm of F. H. White & Co. bought or sold any lumber during the time it was in business.

A. No, sir.

Q. Whether it purchased saw-logs to any extent to be manufactured at its mill.

A. It never purchased any at all.

Q. Then all you purchased had relation to the business you was engaged in, and was in the way of mill supplies, machinery, etc.?

A. Yes, sir.

Q. And were for the purpose of carrying on your business of sawing lumber by the thousand?

A. Yes, sir.

To further maintain and prove the issue on their part, the defendants called as a witness HIRAM E. STAPLES, of Whitehall, Michigan, who testified as follows:

82 Q. Whether you knew the firm of F. H. White & Co.

A. Yes, sir; I knew such a firm.

Q. They had a saw-mill upon White lake?

A. Yes, sir.

Q. Do you know how they got their logs down to the mill?

A. Yes, sir.

Question by the COURT: Do counsel on the other side controvirt the testimony with regard to the business this firm did?

Answer by counsel for the plaintiff: No, sir.

Witness withdrawn by counsel for the defendants.

The testimony here closed.

The foregoing is all the evidence in said cause, material to the issue, which could in any way affect the verdict of the jury.

Counsel for the defendants Dowling and White made the following motion: I move to strike out the testimony of the transaction of August, 1883, of fifty-five hundred dollars. That occurred after these notes in suit had been given and after the plaintiff claims that it became the owner, and, whatever the acts were at that time, they couldn't have gone back to confer authority in 1882 or before that time upon Edward P. Ferry, so as to authorize him to sign the firm name of F. H. White & Co. to the notes in suit.

The court overruled the motion and decided that if the evidence stood alone it would not be admissable, but that it was receivable in connection with the other evidence of what had been done by the firm previously, as showing the continuity in the mode of doing business, and that it might be properly received for the purpose of reflecting back and furnishing some inference as to what had been legitimately done before.

To which ruling the counsel for the defendant Dowling then and there duly excepted.

Counsel for defendant Dowling then prayed the court to
83 read to the jury the following requests to charge:

1st. It appears by the evidence in this case that the notes in suit were made and delivered to the plaintiff in fraud of the rights of the defendant George E. Dowling, who was at the time a member of the firm of F. H. White & Co.; which said request the said court refused to give to the jury, and counsel for the defendant Dowling then and there excepted to such refusal.

2nd. The burden of the proof is upon the plaintiff to show that it is a *bona fide* holder of the notes in question, and that it purchased them in the usual course of business, and paid for them a valuable consideration; which said request the said court refused to give to the jury, and counsel for the defendant Dowling then and there excepted to such refusal.

3rd. The evidence shows that as between the plaintiff and defendant Dowling, defendant Dowling is only an accom-odation maker of the notes in suit; therefore, if the plaintiff had, before or at the time it purchased the notes in suit and paid the consideration therefore, notice that the firm of F. H. White & Co. was an accom-odation maker of the said notes in suit, then the plaintiff cannot recover in this case against the defendant Dowling; which said request the said court refused to give to the jury, and counsel for the defendant Dowling then and there excepted to such refusal.

4th. While witness Lombard testified that he, is agent of the plaintiff, being the cashier of the Fifth National Bank of Chicago, Illinois, at the time he is said to have purchased said notes, and president of the plaintiff at the time it claims to have purchased said notes, did not have notice of the weakness of the paper in question, there is some evidence in this cause tending to prove that the plaintiff did have such notice; which said request the said court
84 refused to give to the jury, and counsel for defendant Dowling then and there excepted to such refusal.

5th. The plaintiff did not purchase the notes in question in the usual course of business; which said request the said court refused to give to the jury, and counsel for defendant Dowling then and there excepted to such refusal.

6th. The burden of proof in this trial is upon the plaintiff to show that the firm of F. H. White & Co. was at the time *of* the notes in suit were signed in the name of that firm by Edward P. Ferry a trading partnership; which said request the said court refused to give to the jury, and counsel for defendant Dowling then and there excepted to such refusal.

7th. The evidence in this case does not show that the firm of F. H. White & Co. was ever a trading partnership; which said request the said court refused to give to the jury, and counsel for the defendant Dowling then and there excepted to such refusal.

8th. Upon the whole evidence in the case your verdict must be no cause of action in favor of the defendant Dowling; which said request the court refused to give to the jury, and counsel for defendant Dowling then and there excepted to such refusal.

Whereupon the court charged the jury to find a verdict for the

amount unpaid upon said notes and interest, which amounted to the sum of eight thousand three hundred twenty-seven dollars and sixty-nine cents; whereupon the counsel for the defendant Dowling then and there duly excepted to said charge.

And the said court, under the charg- and instructions aforesaid given, left the issue to the said jury, and the jury then and there gave their verdict for the said plaintiff for said sum of eight thousand three hundred twenty-seven dollars and sixty-nine cents.

85 And inasmuch as the several matters, proceedings, rulings, and exceptions hereinbefore set forth do not appear upon the record, the counsel for the defendant George E. Dowling hath duly proposed this bill of exceptions and requested that it may be signed; and thereupon the district judge, the presiding judge of said court, at the request of the said counsel for said defendant George E. Dowling, hath duly signed this bill of exceptions this 4th day of June, 1889.

HENRY F. SEVERENS,
Dist. Judge.

86 EXHIBIT A.

Bills Payable.

1873.					1873.		
Dec.	29.	Cash	46...	10 00	Oct.	15.	Petty ledger	38...	255 00
1874.					"	"	"	"	10 00
Jan.	31.	Balance acc't	53...	340 00	"	20.	"	39...	85 00
				350 00					350 00
Feb.	28.	Cash	55...	30 00	Feb.	2.	Balance	54...	340 00
Mar.	31.	"	56...	40 00					
June	8.	"	64...	45 00					
Aug.	25.	"	74...	225 00					
				340 00					340 00
1878.					1878.		
Mar.	30.	Cash	199...	7 50	Mar.	30.	Cash	198...	400 00
Aug.	10.	"	214...	400 00	Dec.	31.	Mill acc't	228...	7 50
				407 50					407 50
					1879.		
Apr.	29.	Cash	241...	2 75	Apr.	29.	Cash	241...	300 00
June	16.	Cash	247...	302 75	June	30.	Personal prop	247...	87 50
Aug.	30.	"	254...	87 50	Dec.	31.	Mill acc't	267...	5 50
				393 00					393 00
1880.					1880.		
Jan.	31.	Bal. acc't	270...	1,000 00	Jan.	12.	Cash	268...	1,000 00
Apr.	30.	A. Ballard	275...	1,000 00	Feb.	1.	Bal. acc't	272...	1,000 00
June	16.	Cash	281...	2,019 00	"	14.	Cash	273...	1,000 00
Aug.	28.	"	288...	2,000 00	May	22.	Wilson & Hendrie	278...	699 21
Sept.	30.	"	292...	1,000 00	"	"	Maniste, J. W	"	520 00
					June	30.	Insurance	283...	800 00
					"	14.	E. P. F	282...	2,000 00
				6,019 21					6,019 21
July	30.	Cash	318...	1,000 00	May	20.	Cash	311...	2,000 00
Sept.	30.	"	327...	1,000 00					
				2,000 00					2,000 00
1883.					1882.		
Jan.	31.	Bal. acc't	377...	5,500 00	Dec.	30.	Cash	373...	2,500 00
					1883.		
					Jan.	20.	"	"	3,000 00
Aug.	4.	E. P. F.	392...	5,500 00	Feb.	1.	Bal. acc't	378...	5,500 00
Aug.	4.	To transfer E. P. Ferry Lum. Co.		663 76	June	16.	Wilson & Hendre	387...	663 76
				663 73					663 76

87 EXHIBIT B.

Edward P. Ferry.

1879.					1879.		
July	31.	Am't br't for'd	34...	3,369 52	July 31.	Am't for'd	34... 7,221 43
"	"	Cash	250...	902 91	1880.		
Aug.	30.	Petty ledger	252...	15 00	Jan. "	½ net profits	271... 4,061 56
1880.							
Jan.	12.	Cash	268...	1,000 00			
"	31.	Balance		6,795 55			
				11,282 95			11,282 95
Feb.	18.	Cash	273...	1,000 00	Jan. 31.	Balance	6,795 55
"	"	"	"	26 83	1881.		
Apr.	30.	A. Ballard	276...	20 00	Jan. 31.	Profit & loss	305... 4,151 09
May	24.	Cash	279...	25 83			
June	14.	Bills payable	282...	2,000 00			
1881.							
Jan.	31.	Bal. br't down		7,873 98			
				10,946 64			10,946 64
May	20.	Cash		35 00	Jan. 31.	Bal. br't down	$7,873 98
"	"	"	311...	2,500 00	Apr.	30. Exp	309... 1,000 00
"	"	Ferry & Bro	" ...	578 84	May	20. Cash	310... 500 00
June	30.	"	316...	4,106 32	1882.		
July	30.	Cash	318...	17 50	Jan.	31. Prof. & loss	341... 5,337 02
Nov.	20.	"	331...	500 00			
1882.							
Jan.	31.	"	339...	2,000 00			
"	"	Bal. br't down		4,973 34			
				14,711 00			14,711 00
Aug.	31.	Cash	359...	2,000 00	Jan. 31.	Bal. br't down	4,873 34
Sep.	30.	"	361...	2,001 50	Dec.	30. Exp	372... 600 00
Dec.	21.	"	372...	51 67	1883.		
"	30.	"	373...	2,500 00	Jan.	31. F. H. White	375... 8,948 85
					"	" Prof. & loss	377... 6,155 31

[Endorsed :] No. 2213. The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* George E. Dowling *et al.* Bill of exceptions. Filed Jun- 4, 1889. C. L. Fitch, clerk.

88 March Term, A. D. 1889.

TUESDAY, *June* 4, 1889.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL BANK OF AMERICA, at Chicago,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2213.

The bill of exceptions in this cause having been duly settled, signed, and filed, and the defendant George E. Dowling suggesting his intention to remove this cause by writ of error to the Supreme Court of the United States, on his application, and by consent of the attorneys for the respective parties, it is ordered that the stay of proceedings heretofore granted in this cause be, and the same hereby is, continued in full force until the first day of July next.

89 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
GEORGE DOWLING, FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

To Messrs. Thomas W. Ferry, Edward P. Ferry, and Frank H. White.

GENTLEMEN: You will please take notice that the defendant George E. Dowling, above named, is about to sue out a writ of error to the Supreme Court in the above-entitled cause. He hereby requests you to appear and join with him in suing out and prosecuting said writ of error in said Supreme Court.

Dated —.

Yours, &c.,

M. BROWN,
Att'y for Def't Dowling.

To M. Brown, att'y for defendant Dowling.

SIR: We and each of us, the undersigned, defendants in said cause, do respectfully decline to appear and join with said George E. Dowling in suing out and prosecuting said writ of error above named in said Supreme Court.

THOMAS W. FERRY &
EDWARD P. FERRY,
By T. J. O'BRIEN,
Their Attorney.
FRANK H. WHITE,
By H. J. HOYT, *His Att'y.*

[Endorsed:] No. 2213. Cir. c't U. S. for the sixth cir. and western district of Mich., southern division. National Bank of America, at Chicago, *vs.* George E. Dowling, Frank H. White, Thomas W. Ferry, & Edward P. Ferry. Severance. Filed Jun- 27, 1889. C. L. Fitch, clerk. M. Brown, att'y for Geo. E. Dowling.

90 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Southern Division of the Western District of Michigan.

WESTERN DISTRICT OF MICHIGAN,
Southern Division.

To the honorable justices of the Supreme Court of the United States:

And now comes George E. Dowling, of Montague, in said district, by M. Brown, his attorney, and complains that in the records and proceedings and also in the rendition of judgment in a suit between The National Bank of America, at Chicago, plaintiff, and the said

George E. Dowling and Frank H. White, Edward P. Ferry, and Thomas W. Ferry, defendants, tried in the circuit court of the United States for said southern division of the said western district of Michigan, at the March term thereof, A. D. 1888, and in which judgment was rendered against him and the said other defendants on the sixth day of June, A. D. 1888, manifest error hath intervened, to the great damage of the said George E. Dowling, who having requested his codefendants to join with him in prosecuting a writ of error to the Supreme Court, and they and each one of them having refused so to do, which said refusal is in writing and has been duly filed in said cause; wherefore he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

M. BROWN,
Attorney for said George E. Dowling.

[Endorsed:] The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Petition for writ of error. The writ of error within prayed for is hereby allowed June 28th, 1889. Henry F. Severens, dist. judge. Filed Jun- 29, 1889. C. L. Fitch, clerk.

91 Supreme Court of the United States.

NATIONAL BANK OF AMERICA, at Chicago,
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, THOMAS W. FERRY, and EDWARD P. FERRY.

Know all men by these presents that we, George E. Dowling, the above-named defendant, of Montague, in the western district, southern division of Michigan, as principal, & George R. Hancock, William F. Nufer, George H. Mason, Frank E. Jones, Lafayette G. Ripley, and William H. Lobdell, as sureties, are held and firmly bound unto The National Bank of America, at Chicago, the above-named plaintiff, in the sum of eleven thousand dollars, lawful money of the United States, to be paid to the said National Bank of America, at Chicago, its successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of — heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 20th June, A. D. 1889.

Whereas the above-named George E. Dowling hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment lately rendered by the circuit court of the United States for the sixth circuit and southern division of the western district of Michigan, in a certain cause wherein the above-bounden George E. Dowling, Frank H. White, Thomas W. Ferry, and Edward P. Ferry were defendants and the said National Bank of America, at Chicago, was plaintiff;

Now, therefore, the condition of this obligation is such that if the above-bounden defendant, George E. Dowling, shall prosecute his said writ of error to effect and answer all costs and damages
92 if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE E. DOWLING. [L. S.]
GEORGE R. HANCOCK. [L. S.]
WILLIAM F. NUFER. [L. S.]
GEORGE H. MASON. [L. S.]
FRANK E. JONES. [L. S.]
LAFAYETTE G. RIPLEY. [L. S.]
WILLIAM H. LOBDELL. [L. S.]

This bond is hereby approved, both in form and substance, including the sufficiency of the sureties.

H. F. SEVERENS,
Dist. Judge.

June 28, 1889.

UNITED STATES OF AMERICA,
Western District of Michigan.

George R. Hancock, of Whitehall, in said district, being duly sworn, deposes and says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

GEORGE R. HANCOCK.

Sworn and subscribed to before me this 26 day of June, A. D. 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Michigan, So. Division.

UNITED STATES OF AMERICA,
Western District of Michigan.

William F. Nufer, of said district, being duly sworn, deposes and says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

WILLIAM F. NUFER.

Subscribed and sworn to before me this 26 day of June, A. D. 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Michigan.

93 UNITED STATES OF AMERICA,
Western District of Michigan.

George H. Mason, of said district, being duly sworn, deposes and says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

GEORGE H. MASON.

Subscribed and sworn to before me this 26 day of June, A. D. 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Michigan, So. Div.

UNITED STATES OF AMERICA, }
Western District of Michigan. }

Frank E. Jones, of said district, being duly sworn, deposes and says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

FRANK E. JONES.

Subscribed and sworn to before me this 26 day of June, A. D. 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Michigan, So. Div.

UNITED STATES OF AMERICA, }
Western District of Michigan. }

Lafayette G. Ripley, of said district, being duly sworn, says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

LAFAYETTE G. RIPLEY.

Subscribed and sworn to before me this 26 day of June, 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Michigan, So. Div.

UNITED STATES OF AMERICA, }
Western District of Michigan. }

William H. Lobdell, of said district, being duly sworn, says that he is worth the sum of three thousand dollars over and above all his just debts and liabilities.

WILLIAM H. LOBDELL.

Subscribed and sworn to before me this 26 day of June, A. D. 1889.

JAMES SNOW,
U. S. Comm'r for the Western Dist. of Mich., So. Div.

[Endorsed:] The circuit court of the United States for the western district of Michigan, southern division. National Bank of America, at Chicago, *vs.* Frank H. White *et al.* Supersedeas bond. Filed Jun- 29, 1889. C. L. Fitch, clerk.

94 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD F. FERRY, and THOMAS W. FERRY, Plaintiff in Error,
vs.
THE NATIONAL BANK OF AMERICA, at Chicago, Defendant in Error.

And now, on this 29th day of June, A. D. 1889, comes the said George E. Dowling, plaintiff in error, by M. Brown, his attorney, and says that in the record and proceedings aforesaid in the said circuit court of the United States for the sixth circuit and western district of Michigan, southern division, and in the giving of judgment aforesaid, there is manifest error—that is to say:

First. There is error in this, to wit, that by the record aforesaid it appears that the testimony of one Lombard, a witness for the said defendant in error, was taken before a United States commissioner at Chicago, Illinois, which said testimony was to be read and was read in evidence at the trial of this case in the said circuit court. When the testimony of said witness was being taken the attorney for the said defendant in error asked said witness as follows: "I wish you would state, Mr. Lombard, what paper of the firm — F. H. White & Co. the Fifth National bank discounted at any time, giving the date of the paper, the date you discounted it, and state also the amounts and maturity of the paper and all particulars of
95 the paper." The counsel for the said plaintiff in error objected to said question as being incompetent and immaterial. The said circuit court overruled said objection at the trial of said cause because the ground of said objection was not made more specific before said United States commissioner.

Second. There is also error in this, to wit: That by the record aforesaid it appears that the attorney for the said defendant in error asked said witness Lombard the following question: "They were given that credit August the 20th, 1881?" To which question the counsel for the said plaintiff in error objected upon the ground that it was incompetent; which said objection was overruld by said circuit court and the answer to said question allowed to be read in evidence.

Third. There is also error in this, to wit: By the record aforesaid it appears that the counsel for said defendant in error asked said witness Lombard this question, to wit: "Now, you may commence with that original note and trace down its earliest renewals until it results in this note of November 16, 1882." The counsel for the plaintiff in error objected to the question as being immaterial and incompetent. The said circuit court at the trial of said cause overruled said objection because it was not specific enough and allowed said question to be answered.

Fourth. There is also error in this, to wit: By the record aforesaid it appears that the counsel for the said defendant in error asked the said witness Lombard the following question, to wit: "All these

renewals in the case of both notes was paper made by whom?" Counsel for the said plaintiff in error objected to said question before said United States commissioner as being immaterial and incompetent, and at the trial of said cause said circuit court overruled said objection because it was not made more specific before said United States commissioner and allowed the answer of said
96 question to be read in evidence. Said witness answered said question as follows: "Paper made by F. H. White & Co. and endorsed by Ferry & Bro. Now, I say all these renewals were at that time. It appears by the books that some of them were paid by check and the amount of the discount credited and some by renewals." Counsel for the said plaintiff in error moved to strike out the last answer because it was incompetent; which said motion was taken down and recorded by said United States commissioner, but at the trial of this cause in the said circuit court of the United States the said court overruled said motion because the ground upon which it was based was not stated more specifically before said United States commissioner, and said answer was permitted to be read in evidence before the said court and the jury impanelled to try said case.

Fifth. There is also error in this, to wit: By the record aforesaid it appears that the counsel for the defendant in error asked said witness Lombard, when his testimony was being taken before said United States commissioner, the following question, to wit: "Now, upon this matter that you have testified about, the discounting of the notes, etc., do they appear upon the books of the bank?" Said witness answered said question, "They do." Whereupon the counsel for the plaintiff in error moved to strike out all said testimony in relation to discounting the notes or so much thereof as appears on the books of the bank because said testimony was incompetent; which said motion was recorded by said United States commissioner and was read at the trial of this cause before said circuit court, and said court overruled the same and permitted said testimony sought to be stri-ken out by said motion to be read in evidence at the trial of said cause before said court and jury.

97 Sixth. There is also error in this, to wit: By the record aforesaid it appears that after the evidence was all in at the trial of said cause and both parties had rested their case the counsel for the said plaintiff in error prayed the said circuit court to read to the said jury the following request to charge:

First. It appears by the evidence in this case that the notes in suit were made and delivered to the plaintiff in fraud of the rights of the defendant George E. Dowling, who was at the time a member of the firm of F. H. White & Co.; which said request the said circuit court refused to give to the jury.

Seventh. There is also error in this, to wit: By the record aforesaid it appears that after the evidence had all been taken at the trial of this cause before said circuit court and both parties had rested their case the counsel for the said plaintiff in error prayed the said court to read the following request to charge to the jury:

Second. The burden of proof is upon the plaintiff to show that it

is a *bona fide* holder of the notes in question and that it purchased them in the usual course of business and paid for them a valuable consideration; which said request the said court refused to read to the jury as prayed by said counsel for plaintiff in error.

Eighth. There is also error in this, to wit: In the record aforesaid it appears that after the evidence had all been taken at the trial of this cause before said circuit court and both parties had rested their case the counsel for the plaintiff in error prayed the court to read to the jury as a part of the charge the following request to charge:

Third. The evidence shows that, as between the plaintiff and defendant Dowling, defendant Dowling is only an accom-odation maker of the notes in suit; therefore, if the plaintiff had, before or at the time it purchased the notes in suit and paid the con-
98 sideration therefor, notice that the firm of F. H. White & Co. was an accom-odation maker of the said notes in suit, then the plaintiff cannot recover in this case against the defendant Dowling; which said request the said court refused to give to th- jury.

Ninth. There is also error in this, to wit: By the record aforesaid it appears that after the evidence had been closed upon both sides at the trial of this cause in the said circuit court the counsel for the said plaintiff in error prayed the court to read to the jury as a part of the charge the following request: Fourth. While witness Lombard testified that he, *is* agent of the plaintiff, being the cashier of the Fifth National Bank of Chicago, Illinois, at the time he is said to have purchased said notes, and the president of the plaintiff at the time it claims to have purchased said notes, did not have notice of the weakness of the paper in question, there is some evidence in this cause tending to prove that the plaintiff did have such notice; which said request the said court refused to give to the jury.

Tenth. There is also error in this, to wit: By the record aforesaid it appears that the counsel for the said plaintiff in error, after the evidence had all been taken on both sides at the trial before said circuit court, prayed the court to charge the jury as follows: Fifth request. The plaintiff did not purchase the notes in question in the usual course of business; which said request the said circuit court refused to read to the jury.

Eleventh. There is also error in this, to wit: By the record aforesaid it appears that after the evidence had all be-n taken at the trial of said cause the counsel for the said plaintiff in error prayed the court to read the following request to charge to the jury: Sixth. The burden of proof in this trial is upon t-e plaintiff to show
99 that the firm of F. H. White & Co. was, at the time the notes in suit were signed in the name of that firm by Edward P. Ferry, a trading partnership; which said request said court refused to give to the jury as a part of the charge.

Twelve. There is also error in this, to wit: By the record aforesaid it appears that after the testimony had all been taken at the trial of said cause and both parties had rested their case the counsel

for the said plaintiff in error prayed the court to charge the jury as follows: Seventh. The evidence in this case does not show that the firm of F. H. White & Co. was ever a trading partnership; which said request the said court refused to give as a part of his charge to the jury.

Thirteenth. There is also error is this, to wit: By the records aforesaid it appears that the counsel for the said plaintiff in error, after the testimony had all been taken at the trial of this case before the said circuit court, requested the court to charge the jury as follows: Eighth. Upon the whole evidence in this case your verdict must be no cause of action in favor of the defendant Dowling; which said request the said court refused to give to the jury.

Fourteenth. There is also error in this, to wit: By the record aforesaid it appears that after the evidence had all been taken at the trial of said cause before the circuit court and both parties had rested their case, and after the said cause had been argued by counsel before the said court upon the law applicable thereto, the said circuit court, upon its own motion, charged the jury to find a verdict in favor of the defendant in error for the amount unpaid upon the said notes and interest, which amounted to the sum of $8,327.69.

Wherefore, and for divers other manifest errors appearing in the said record and proceedings, the said plaintiff in error, by M.
100 Brown, his attorney, prays that the judgment rendered in said cause by said circuit court may be reversed.

M. BROWN,
Attorney for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States. George E. Dowling, impleaded with Frank H. White *et al.*, plaintiff in error, *vs.* The National Bank of America, at Chicago, defendant in error. Assignments of error and prayer for reversal. Filed Jun- 29, 1889. C. L. Fitch, clerk.

101 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The National Bank of America, at Chicago, plaintiff, and George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry, *is* defendant, a manifest error hath happened, to the great damage of the said defendant, George E. Dowling, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United

States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, and the seal of said circuit court, at Grand Rapids, the 29th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

Seal of the U. S. Circuit Court, Western District of Mich., Southern Division.

CHARLES L. FITCH,
Clerk of the Circuit Court of the United States for the Western District of Michigan.

Allowed by—
H. F. SEVERENS,
U. S. Dist. Judge.

The 28th day of June, A. D. 1889.

[Endorsed:] The Supreme Court of the United States. George E. Dowling, impleaded with Frank H. White *et al.*, plaintiff in error, *vs.* The National Bank of America, at Chicago, defendant in error. Writ of error. Filed Jun- 29, 1889. C. L. Fitch, clerk.

102 UNITED STATES OF AMERICA, *ss*:

To the National Bank of America, at Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and southern division of the western district of Michigan, wherein George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry F. Severens, district judge and presiding judge of said circuit court of the United States, this 28th day of June, A. D. 1889.

HENRY F. SEVERENS,
Dist. Judge.

[Endorsed:] The circuit court of the United States for the western district of Michigan, southern division. Service accepted June 29, 1889. Blair, Kingsley & Klinhans, att'ys for pl'ff. Filed July 6, 1889. C. L. Fitch, clerk.

103 "Copy."

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The National Bank of America, at Chicago, plaintiff, and George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry, *is* defendant, a manifest error hath happened, to the great damage of the said defendant, George E. Dowling, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, and the seal of said circuit court, at Grand Rapids, the 29th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

CHARLES L. FITCH,
Clerk of the Circuit Court of the United States
for the Western District of Michigan.

Allowed by—
H. F. SEVERENS,
U. S. Dist. Judge.

The 28th day of June, A. D. 1889.

[Endorsed:] The Supreme Court of the United States. George E. Dowling, impleaded with Frank H. White *et al.*, plaintiff in error, *vs.* The National Bank of America, at Chicago, defendant in error. Copy of writ of error for the defendant in error. Deposited July 6, 1889. C. L. Fitch, clerk.

104 THE UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Seal of the U. S. Circuit Court, Western District of Mich., Southern Division.

Witness my official signature and the seal of said court, at Grand Rapids, this 12th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

CHARLES L. FITCH, *Clerk*,
By —— ——, *Deputy*.

Endorsed on cover: Case No. 13,600. W. Michigan C. C. U. S. No. 392. George E. Dowling, plaintiff in error, *vs.* The National Bank of America, at Chicago. Filed August 10, 1889.

Office Supreme Court U. S.
FILED.
SEP 3 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1892.

No 65.

GEORGE E. DOWLING, PLAINTIFF IN ERROR,

vs.

NATIONAL BANK OF AMERICA AT CHICAGO,
DEFENDANT IN ERROR.

Error to Circuit Court for Western District of Michigan.

The facts and rulings and charge of the court in the above-entitled cause being substantially identical with the facts, rulings, and charge of the court in the case of George E. Dowling, plaintiff in error, *vs.* The National Exchange Bank of Boston, defendant in error, in which, at the last term of this Court, the judgment below was reversed and a new trial granted, it is now stipulated and agreed that an order may be entered in the above-entitled cause reversing the judgment of the court below and granting the plaintiff in error, George E. Dowling, a new trial with costs, to be taxed.

Dated August 30th, 1892.

MICHAEL BROWN,
Counsel for Plaintiff in Error.
WILLARD KINGSLEY,
Counsel for Defendant in Error.

[Endorsed:] Case No. 13,600. Supreme Court U. S., October term, 1892. Term No., 65. George E. Dowling, pl'ff in error, *vs.* The National Bank of America at Chicago. Stipulation to reverse the judgment of the court below. Filed Sept. 3, 1892.